

**STATE OF NEW MEXICO**  
**LEGISLATIVE EDUCATION STUDY COMMITTEE**

**REPRESENTATIVES**

Mimi Stewart, Vice Chair  
Nora Espinoza  
Mmie C. Hall  
Rick Miera  
Dennis J. Roch  
Sheryl M. Williams Stapleton

**ADVISORY**

Alonzo Baldonado  
Nathan "Nate" Cote  
George Dodge, Jr.  
David M. Gallegos  
Stephanie Garcia Richard  
Timothy D. Lewis  
Tomás E. Salazar  
James E. Smith  
Christine Trujillo  
Bob Wooley

State Capitol North, 325 Don Gaspar, Suite 200  
Santa Fe, New Mexico 87501  
Phone: (505) 986-4591 Fax: (505) 986-4338  
<http://www.nmlegis.gov/lcs/lesc/lescdefault.aspx>



**SENATORS**

John M. Sapien, Chair  
Craig W. Brandt  
Gay G. Kernan  
Howie C. Morales

**ADVISORY**

Jacob R. Candelaria  
Lee S. Cotter  
Daniel A. Ivey-Soto  
Linda M. Lopez  
John Pinto  
William P. Soules  
Pat Woods

Frances Ramirez-Maestas, Director

**LEGISLATIVE EDUCATION STUDY COMMITTEE**  
**CHARTER SCHOOLS SUBCOMMITTEE**

**AGENDA**

**June 18, 2014**  
**State Capitol, Room 322**

- **Staff Review of Potential Topics to be Examined**
  
- **Subcommittee Meeting Schedule**
  
- **Direction to Staff**
  
- **Other Subcommittee Business**

**Adjournment**

**STATE OF NEW MEXICO**  
**LEGISLATIVE EDUCATION STUDY COMMITTEE**

**REPRESENTATIVES**

Mimi Stewart, Vice Chair  
Nora Espinoza  
Jimmie C. Hall  
Rick Miera  
Dennis J. Roch  
Sheryl M. Williams Stapleton

State Capitol North, 325 Don Gaspar, Suite 200  
Santa Fe, New Mexico 87501  
Phone: (505) 986-4591 Fax: (505) 986-4338  
<http://www.nmlegis.gov/lcs/lesc/lescdefault.aspx>

**SENATORS**

John M. Sapien, Chair  
Craig W. Brandt  
Gay G. Kernan  
Howie C. Morales

**ADVISORY**

Alonzo Baldonado  
Nathan "Nate" Cote  
George Dodge, Jr.  
David M. Gallegos  
Stephanie Garcia Richard  
Timothy D. Lewis  
Tomás E. Salazar  
James E. Smith  
Christine Trujillo  
Bob Wooley



**ADVISORY**

Jacob R. Candelaria  
Lee S. Cotter  
Daniel A. Ivey-Soto  
Linda M. Lopez  
John Pinto  
William P. Soules  
Pat Woods

Frances Ramírez-Maestas, Director

Please be advised that the following LESC members were appointed to the **2014 Legislative Education Study Committee Charter Schools Subcommittee** created on April 24, 2014:

Senator John M. Sapien  
Senator Craig W. Brandt  
Senator Linda M. Lopez  
Senator William P. Soules  
Senator Pat Woods

Representative Mimi Stewart, Chair\*  
Representative Dennis J. Roch, Vice Chair\*  
Representative Jimmie C. Hall  
Representative Rick Miera  
Representative James E. Smith  
Representative Christine Trujillo

\*Appointed on June 18, 2014

**ISSUES FOR THE COMMITTEE'S CONSIDERATION REGARDING  
THE REVIEW AND REVISION OF THE CHARTER SCHOOLS ACT**

Issue	Reconciling Multiple Sections of Law	Policy Considerations
Definitions	<ul style="list-style-type: none"> <li>• <u>“Charter school,” “locally chartered,” “state-chartered.”</u> See appropriate sections for the 22-8B-2 (<i>Charter Schools Act</i>), 22-1-2 (<i>Public School Code</i>) and the 22-8-2 (<i>Public School Finance Act</i>);</li> <li>• <u>“Home school.”</u> Needs clear distinction from “virtual school.” (22-1-2);</li> <li>• <u>“Local school board.”</u> How does this definition apply in the case of state-chartered schools? (Cf 22-8-12.3, where, for that section, definition includes governing authorities);</li> <li>• <u>“Public school, school, and school building.”</u> All these need to be reexamined in the context of virtual schools. (22-1-2);</li> <li>• <u>“School district.”</u> Should this definition include state charters; (22-1-2)</li> <li>• <u>“Virtual schools,” or “virtual charter schools.”</u> (22-1-2, 22-8B-2)</li> </ul>	<ul style="list-style-type: none"> <li>• <u>“Virtual schools” and “virtual charter schools.”</u> Area that is entirely unaddressed by NM law. (22-1-2 and 22-8B-2);</li> <li>• <u>“For-profit entity.”</u> Consider the inclusion of wholly owned, non-profit subsidiaries of entities that are otherwise for-profit, such as the management companies contracting with and supplying curricula to virtual schools. (22-8B-2, 22-8-2)</li> </ul>
Audits and Component Units		<p>Clarify whether charter schools are to be audited as individual units or as component units of their chartering authority, either the LEA or the state:</p> <ul style="list-style-type: none"> <li>• As component units of the State or District, do charter schools need to have a separate financial audit under current law?</li> </ul> <p>Under current statute, charter schools are required to have an annual audit (22-8-13.1 A). It is unclear in current statute whether or not charter schools that are determined to be component units of the chartering authority fulfill this statute by having the district or</p>

**ISSUES FOR THE COMMITTEE’S CONSIDERATION REGARDING  
THE REVIEW AND REVISION OF THE *CHARTER SCHOOLS ACT***

<p>Audits and Component Units (continued)</p>		<p>State’s audit include their financial statements and findings.</p> <ul style="list-style-type: none"> <li>• If a school district audit is late because the locally chartered charter school is not timely in its audit procedures, against which entity would progressive sanctions be leveled?</li> </ul> <p>As component units of school districts that have their financial statements as part of the school district audits, it is unclear whether a locally-chartered charter school would be subject to the progressive sanctions for untimely audit reports by the district or the district itself (22-8-13.1 B).</p> <ul style="list-style-type: none"> <li>• Do charter schools, state- or locally chartered, meet the definition of agency under the <i>Audit Act</i>?</li> </ul> <p>As specified in the <i>Audit Act</i>, state governmental entities defined as an “agency” (12-6-2(A)) have specific requirements related to their financial audits. School district is given as an example, though the definition is silent as to the specific instance of charter schools. The remainder of the Act does include instances where charter schools are mentioned, however. For example, the State Auditor is required to report to the LFC, DFA and PED on timeliness and compliance with other provisions of the Act (12-6-3 F and G). Again, the issue arises of whether or not to specify which entity (district, state or charter school) is considered to be noncompliant, if charter schools are component units of their authorizing entity.</p> <p>This clarification of “agency” with regard to component units can also affect the following areas of the Audit Act:</p> <ul style="list-style-type: none"> <li>➤ Audit costs (12-6-4 A);</li> <li>➤ Reporting for criminal violations (12-6-6);</li> <li>➤ Surety bonding (12-6-7);</li> </ul>
---	--	---

**ISSUES FOR THE COMMITTEE'S CONSIDERATION REGARDING  
THE REVIEW AND REVISION OF THE *CHARTER SCHOOLS ACT***

<p>Audits and Component Units (continued)</p>		<ul style="list-style-type: none"> <li>➤ Repayment of funds (12-6-8); and</li> <li>➤ Physical inventory (12-6-10).</li> </ul> <p>Note that the Office of the State Auditor, in rule, appears to treat locally and state-chartered charter schools as component units of either their local school district or PEC, respectively.</p>
<p>Appeals Process</p>	<p>Streamline and make parallel the appeals process and component elements for:</p> <ul style="list-style-type: none"> <li>• locally chartered and state chartered schools;</li> <li>• LEAs and PEC; and</li> <li>• appeals and reviews on secretary's own motion.</li> </ul>	<ul style="list-style-type: none"> <li>• Consider the relative roles of the PEC and the PED/Secretary in the appeals process: <ul style="list-style-type: none"> <li>➤ Recent (2013) changes to Department rule removed the need for remand to the chartering authority in cases where the secretary reverses the authority's decision, whether on appeal or on secretary's own motion;</li> <li>➤ Now, secretary's decision on appeal or review is essentially the final action in the process, excepting potential appeal of secretary's administrative decisions to the district court.</li> </ul> </li> <li>• See HB 392 (2013), which passed both chambers but was ultimately vetoed by the governor, citing, among other issues, the possibility of the PEC being granted an effective "pocket veto" of a charter school's application if action was not taken on it within a certain time period.</li> </ul>
<p>Authorizers</p>		<ul style="list-style-type: none"> <li>• Continue with current system of locally chartered and state-chartered charter schools? Additional chartering authorities? (High Ed Institutions, not-for-profits?)</li> <li>• Limitations on number of charters? Currently 75 over a five-year period, or 15 in one year.) (22-8B-11)</li> <li>• US House of Reps recently passed <b>HR 10</b>, <i>Success and Opportunity through Quality Charter Schools Act</i> with strong bipartisan support (final vote was 365/45), which would replace current charter school grant program with one focused on awarding grants to state entities</li> </ul>

**ISSUES FOR THE COMMITTEE'S CONSIDERATION REGARDING  
THE REVIEW AND REVISION OF THE *CHARTER SCHOOLS ACT***

<p>Authorizers (continued)</p>		<p>for opening new charter schools and expanding and replicating successful ones. Further, HR 10 would give grant priority to those applicants from states that:</p> <ul style="list-style-type: none"> <li>➤ have a chartering agency other than LEAs;</li> <li>➤ do not impose limitations on the number or percentage of charter schools that may exist, or the number of students who may attend them;</li> <li>➤ ensure prompt, equitable funding for charter schools as compared with traditional public schools; and</li> <li>➤ use charter schools and best practices to help improve struggling schools and LEAs.</li> </ul> <ul style="list-style-type: none"> <li>• Additionally, HR 10 would give grant priority also to applicants to the extent that they: <ul style="list-style-type: none"> <li>➤ partner with an organization experienced in developing management orgs for support of charter school development;</li> <li>➤ support charters for at-risk students;</li> <li>➤ authorize charters to serve as school food authorities; and</li> <li>➤ ensure that all authorizing agencies implement best practices for authorization;</li> </ul> </li> <li>• Consider the sufficiency of the 2.0% set aside for administrative costs, and whether it should be funneled through PED, as is currently the case, or directly allocated to authorizer. (22-8B-13);</li> </ul>
<p>Enrollment Growth</p>		<ul style="list-style-type: none"> <li>• Specifically with regard to charter schools, is it appropriate that enrollment growth units be awarded to a school for the graduated addition of new grade-levels over the course of several years, a practice common to new and expanding charter schools?</li> <li>• Should such units be limited to increases from the grade-levels that already existed in the previous school year?</li> <li>• Input from NM Finance Authority... (22-8-23.1)</li> </ul>

**ISSUES FOR THE COMMITTEE'S CONSIDERATION REGARDING  
THE REVIEW AND REVISION OF THE *CHARTER SCHOOLS ACT***

<p>Exemptions and Waivers from Requirements of the <i>Public School Code</i></p>	<p>Consider streamlining and consolidating mandatory and discretionary waivers in the <i>Charter Schools Act</i> with those provisions in the PED statutes granting the secretary authority to waive most requirements of the <i>Public School Code</i>. (22-8B-5 and 22-2-2.2)</p>	<p>According to current provisions of the <i>Charter Schools Act</i>, charter schools are not subject to all the legal requirements as are traditional public schools:</p> <ul style="list-style-type: none"> <li>• local school boards may waive (only) locally imposed requirements;</li> <li>• state-chartered schools are exempt from school district requirements;</li> <li>• <b>PED shall waive</b> requirements pertaining to individual class load, teaching load, length of school day, staffing patterns, subject areas, instructional material purchase, evaluation standards for school personnel, school principal duties and driver's education;</li> <li>• <b>PED may waive</b> requirements pertaining to graduation requirements; and</li> <li>• PED staff have indicated that even those waivers that statute suggest are to be mandatory are considered as part of the application process, and point to 22-8B-5(C) ("Any waivers <i>granted</i> pursuant to this section shall be for the term of the charter granted but <i>may be suspended or revoked</i> earlier by the department" [emphasis added by PED staff]) as evidence that law contemplates departmental discretion in this area.</li> </ul> <p>The committee may wish to consider clarifying which exemptions are to be automatically granted by operation of law to charter schools and which are within the discretion of PED to grant or deny as part of the charter application process. (22-8B-5)</p> <p>Additionally, Section 22-2-2.1 also:</p> <ul style="list-style-type: none"> <li>• requires the secretary to waive, upon reasonable request of a school that exceeds educational standards, any requirements of the <i>Public School Code</i> having to do with accreditation review, length of school day, class load, subject areas, and the purchase of instructional materials. (22-2-2.1(A));</li> <li>• allows the secretary to waive, upon request from a school that</li> </ul>
--	---	--

**ISSUES FOR THE COMMITTEE’S CONSIDERATION REGARDING  
THE REVIEW AND REVISION OF THE *CHARTER SCHOOLS ACT***

<p>Exemptions and Waivers from Requirements of the <i>Public School Code</i> (continued)</p>		<p>exceeds educational standards, requirements pertaining to graduation and evaluation of school personnel, as well as <i>any other requirement</i> of the <i>Public School Code</i><sup>1</sup>, where there is support from the teachers at the requesting school and the school’s local board, and where the requirement in question impedes innovation.</p> <p>The committee may wish to consider more specific language regarding the meaning and implication of:</p> <ul style="list-style-type: none"> <li>• “exceeds educational standards;”</li> <li>• “impede[s] innovation;” and</li> <li>• “support by the teachers at the requesting school and the requesting school’s local school board.”</li> </ul> <p>The committee may also wish to review whether the authority that the Legislature has granted to the secretary under this section is too broad. For example, the secretary recently waived requirements having to do with public notice, comment, and participation in the process (all of which are arguably unrelated to educational requirements) for one charter school, prior to the PEC even issuing a ruling on the amended charter application that would have put this requirement at issue. Should there be requirements, other than those related to alcohol on school premises, which should not be subject to the secretary’s waiver?</p>
<p>Expansion of Charter Schools</p>	<p>The structure of subparagraph 22-8B-4(L) subjects the meaning of the statute to some ambiguity:</p> <ul style="list-style-type: none"> <li>• May or may not a charter school, with or without permission of the chartering authority, expand into a school district other than its home</li> </ul>	<p>If a chartering authority, especially a local school district, may allow expansion across district lines, should such expansion be subject to a process, more specific than a simple amendment to the charter, allowing for public notice, comment and participation in the newly targeted school district, which presumably had been absent at the initial creation of the school in a different district?</p>

<sup>1</sup> Excepting requirements under the *School Alcohol-Free Zone Act* (Chapter 22, Article 5, NMSA 1978)

**ISSUES FOR THE COMMITTEE'S CONSIDERATION REGARDING  
THE REVIEW AND REVISION OF THE *CHARTER SCHOOLS ACT***

Expansion of Charter Schools (continued)	<p>district?</p> <ul style="list-style-type: none"> <li>• If so, how are program units to be calculated? As one school, or as two or more?</li> <li>• Is the calculation of program units directly related to the issue of cross-district expansion, or is it a separate consideration, necessitating a separate subparagraph, or at least sentence?</li> </ul>	
Governing Boards		<p>Charter school governing boards frequently lack detailed succession plans, which may become problematic as a school develops, and sees the members of its originating board depart. Current provisions in NM law address training of governing board members, as well as conflicts of interest. The details of succession plans are governed by requirements in the NMAC, which make succession plans a part of the contract between the school and the authorizer.</p> <ul style="list-style-type: none"> <li>• Should NM statutory law more directly influence the particulars of succession policies?</li> <li>• While the details are appropriately left to the individual schools, it should be noted that charter schools are public schools and, unlike traditional public schools, the general public has no input in the selection and successors of board members.</li> <li>• Should NM law contemplate some kind of public input for governing boards?</li> <li>• Should NM law at least set out minimal statutory requirements for the establishment of charter school governing boards and, especially, succession plans?</li> </ul>
Size-Adjustment Program Units		<p>According to the <i>Public School Finance Act</i>, “[s]eparate schools established to provide special programs, including but not limited to vocational and alternative education, shall not be classified as public schools for purposes of generating size adjustment program units.” There is some question as to</p>

**ISSUES FOR THE COMMITTEE’S CONSIDERATION REGARDING  
THE REVIEW AND REVISION OF THE *CHARTER SCHOOLS ACT***

<p>Size-Adjustment Program Units (continued)</p>		<p>whether this provision can be:</p> <ul style="list-style-type: none"> <li>• interpreted to exclude all charter schools, by virtue of their nature as schools with a program “mission” that differs from that of the traditional public schools, so that charter schools might not be eligible for size-adjustment units; or</li> <li>• interpreted more narrowly, thus excluding those charter schools that offer a particular, targeted program, such as STEM, for example? What about schools such as SAME schools that target particular populations, like incarcerated students?</li> </ul>
<p>Transportation Funding</p>	<p>Harmonize requirements across the <i>Charter Schools Act</i> and the <i>Public School Finance Act</i>, as well as other areas of NM law.</p>	<p>There currently appear to be different eligibility and calculation considerations for charter schools, depending upon whether they be locally or state-chartered:</p> <ul style="list-style-type: none"> <li>• According to 22-8B-4(I), locally chartered schools are required to negotiate with a school district for transportation, with limits that may be established not to extend beyond the borders of the school district.</li> <li>• Provisions regarding state-chartered schools are less clear: <ul style="list-style-type: none"> <li>➤ The <i>Public School Finance Act</i> indicates that: <ul style="list-style-type: none"> <li>▪ state-chartered charter schools are subject to the same requirements as school districts for remaining transportation funding balances (22-8-26(B));</li> <li>▪ state charters may provide additional services for established program needs, subject to approval of the state transportation director (22-8-26(E)).</li> </ul> </li> <li>➤ However, it is unclear whether all state-chartered charters actually receive a transportation funding distribution or are merely eligible for it:</li> </ul> </li> </ul>

**ISSUES FOR THE COMMITTEE'S CONSIDERATION REGARDING  
THE REVIEW AND REVISION OF THE *CHARTER SCHOOLS ACT***

<p>Transportation Funding (continued)</p>		<ul style="list-style-type: none"> <li>▪ PED must calculate transportation allocations for each state-charter (22-8-29.1(B)); and</li> <li>▪ state charters must report certain required information to the state transportation director (22-8-29(A)).</li> <li>▪ Yet, the transportation director must certify that the allocations are <i>based on</i> the transportation distribution formula (emphasis added);</li> <li>▪ the allocations are to be based on the tentative transportation budget of the state-charter for the current fiscal year (22-8-29(C)); and</li> <li>▪ periodic installment payments to state charters are to be based on the allocations certified by the secretary (22-8-29(D)).</li> </ul> <p>➤ Thus, while allocations for state charters are required to be calculated under one section of law, other sections only require that the allocations be based on the funding formula and the state-chartered charter school's tentative transportation budgets.</p> <p>Ought both types of schools to be treated in the same fashion?</p> <p>As attendance at a charter school is ultimately the choice of the students' families, should transportation funding for all public schools be reduced as a result of charters' use of the funds, or should transportation costs be left up to the students' families, as a natural result of their choice to opt out of the traditional public school system in favor of a charter school?</p>
---	--	--

**ISSUES FOR THE COMMITTEE’S CONSIDERATION REGARDING  
THE REVIEW AND REVISION OF THE *CHARTER SCHOOLS ACT***

<p>Virtual Charter Schools</p>	<p>Reconcile any new or amended provisions of law that pertain to virtual charters with other provisions within the <i>Charters Schools Act</i>, the <i>Public School Code</i>, the <i>Public School Finance Act</i> and any other pertinent body of New Mexico law.</p>	<p>Some issues pertaining to charter schools that might be considered:</p> <ul style="list-style-type: none"> <li>• Definitions;</li> <li>• SEG and travelling units;</li> <li>• recruiting;</li> <li>• seat-time, attendance and the <i>Compulsory School Attendance Law</i>;</li> <li>• assessments and proctoring;</li> <li>• attribution of work and accountability;</li> <li>• physical premises, learning centers and required visits;</li> <li>• overhead and lease assistance (see PSFA);</li> <li>• curriculum control;</li> <li>• school management by subsidiaries of for-profit entities;</li> <li>• provisions restricting “bad actors” from opening or managing charter schools;</li> <li>• teacher and principal evaluation;</li> <li>• extracurricular activities, sports and graduation requirements; and</li> <li>• instructional materials.</li> </ul>
--------------------------------	--	---

## ARTICLE 8B Charter Schools

### Section

- 22-8B-1 Short title.
- 22-8B-2 Definitions.
- 22-8B-3 Purpose.
- 22-8B-4 Charter schools' rights and responsibilities; operation.
- 22-8B-4.1 Charter schools' enrollment procedures.
- 22-8B-4.2 Charter school facilities; standards.
- 22-8B-5 Charter schools; status; local school board authority.
- 22-8B-5.1 Governing body training.
- 22-8B-5.2 Governing body conflicts of interest.
- 22-8B-5.3 Chartering authority; powers; duties; liability.
- 22-8B-6 Charter school requirements; application process; authorization; state board of finance designation required; public hearings; subcommittees.
- 22-8B-7 Appeal of denial, nonrenewal, suspension or revocation; procedures.
- 22-8B-8 Charter application; contents.
- 22-8B-9 Charter school contract; contents; rules.
- 22-8B-9.1 Performance framework.
- 22-8B-10 Charter schools; employees.
- 22-8B-11 Charter schools; maximum number established.
- 22-8B-12 Charter schools; term; oversight and corrective actions; site visits; renewal of charter; grounds for nonrenewal or revocation.
- 22-8B-12.1 Charter school closure; chartering authority protocols; chartering authority duties; distribution of assets.
- 22-8B-13 Charter school financing.
- 22-8B-14 Charter schools stimulus fund created.
- 22-8B-14.1 Repealed.
- 22-8B-15 Repealed.
- 22-8B-16 Public education commission; powers and duties.
- 22-8B-17 Charter schools division; duties.
- 22-8B-17.1 Division; annual report.

### **22-8B-1. Short title.**

Chapter 22, Article 8B NMSA 1978 may be cited as the "Charter Schools Act".

History: Laws 1999, ch. 281, § 1; 2005, ch. 221, § 1; 2006, ch. 94, § 26.

The 2006 amendment, effective July 1, 2007, changed "1999 Charter Schools Act" to "Charter Schools Act".

The 2005 amendment, effective July 1, 2005, changed the statutory reference to the act.

### **22-8B-2. Definitions.**

As used in the Charter Schools Act:

© 2014 by the State of New Mexico. All rights reserved.

UCC Official Comments © by ALI & the NCCUSL. Reproduced with permission of the PEB for the UCC. All rights reserved.

A. "charter school" means a conversion school or start-up school authorized by the chartering authority to operate as a public school;

B. "chartering authority" means either a local school board or the commission;

C. "commission" means the public education commission;

D. "conversion school" means an existing public school within a school district that was authorized by a local school board to become a charter school prior to July 1, 2007;

E. "division" means the charter schools division of the department;

F. "governing body" means the governing structure of a charter school as set forth in the school's charter; and

G. "start-up school" means a public school developed by one or more parents, teachers or community members authorized by the chartering authority to become a charter school.

History: Laws 1999, ch. 281, § 2; 2006, ch. 94, § 27.

**The 2006 amendment**, effective July 1, 2007, in Subsection A, deleted the qualification that a charter school be located within a school district authorized by the local school board to operate as a charter school and added the qualification that a charter school be authorized by the chartering authority to operate as a public school; added Subsection B to define chartering authority; added Subsection C to define commission; provided in Subsection D (former Subsection B) that a conversion school is a school that was authorized to become a charter school prior to July 1, 2007; added a new Subsection E to define division and changed "local school board of the school district" to "chartering authority" in Subsection G (formerly Subsection D).

### **22-8B-3. Purpose.**

The Charter Schools Act is enacted to enable individual schools to structure their educational curriculum to encourage the use of different and innovative teaching methods that are based on reliable research and effective practices or have been replicated successfully in schools with diverse characteristics; to allow the development of different and innovative forms of measuring student learning and achievement; to address the needs of all students, including those determined to be at risk; to create new professional opportunities for teachers, including the opportunity to be responsible for the learning program at the school site; to improve student achievement; to provide parents and students with an educational alternative to create new, innovative and more flexible ways of educating children within the public school system; to encourage parental and community involvement in the public school system; to develop and use site-based budgeting; and to hold charter schools accountable for meeting the department's educational standards and fiscal requirements.

History: Laws 1999, ch. 281, § 3; 2006, ch. 94, § 28.

**The 2006 amendment**, effective July 1, 2007, changed "restructure" to "structure"; changed "state board" to "department" and deleted the requirement that charter schools meet minimum educational

standards and financial requirements.

#### **22-8B-4. Charter schools' rights and responsibilities; operation.**

A. A charter school shall be subject to all federal and state laws and constitutional provisions prohibiting discrimination on the basis of disability, physical or mental handicap, serious medical condition, race, creed, color, sex, gender identity, sexual orientation, spousal affiliation, national origin, religion, ancestry or need for special education services.

B. A charter school shall be governed by a governing body in the manner set forth in the charter contract; provided that a governing body shall have at least five members; and provided further that no member of a governing body for a charter school that is initially approved on or after July 1, 2005 or whose charter is renewed on or after July 1, 2005 shall serve on the governing body of another charter school. No member of a local school board shall be a member of a governing body for a charter school or employed in any capacity by a locally chartered charter school located within the local school board's school district during the term of office for which the member was elected or appointed.

C. A charter school shall be responsible for:

(1) its own operation, including preparation of a budget, subject to audits pursuant to the Audit Act; and

(2) contracting for services and personnel matters.

D. A charter school may contract with a school district, a university or college, the state, another political subdivision of the state, the federal government or one of its agencies, a tribal government or any other third party for the use of a facility, its operation and maintenance and the provision of any service or activity that the charter school is required to perform in order to carry out the educational program described in its charter contract. Facilities used by a charter school shall meet the standards required pursuant to Section 22-8B-4.2 NMSA 1978.

E. A conversion school chartered before July 1, 2007 may choose to continue using the school district facilities and equipment it had been using prior to conversion, subject to the provisions of Subsection F of this section.

F. The school district in which a charter school is geographically located shall provide a charter school with available facilities for the school's operations unless the facilities are currently used for other educational purposes. An agreement for the use of school district facilities by a charter school may provide for reasonable lease payments; provided that the payments do not exceed the sum of the lease reimbursement rate provided in Subparagraph (b) of Paragraph (1) of Subsection I of Section 22-24-4 NMSA 1978 plus any reimbursement for actual direct costs incurred by the school district in providing the facilities; and provided further that any lease payments received by a school district may be retained by the school district and shall not be considered to be cash balances in any calculation pursuant to Section 22-8-41 NMSA 1978. The available facilities provided by a school district to a charter school shall meet all

occupancy standards as specified by the public school capital outlay council. As used in this subsection, "other educational purposes" includes health clinics, daycare centers, teacher training centers, school district administration functions and other ancillary services related to a school district's functions and operations.

G. A locally chartered charter school may pay the costs of operation and maintenance of its facilities or may contract with the school district to provide facility operation and maintenance services.

H. Locally chartered charter school facilities are eligible for state and local capital outlay funds and shall be included in the school district's five-year facilities plan.

I. A locally chartered charter school shall negotiate with a school district to provide transportation to students eligible for transportation under the provisions of the Public School Code [Chapter 22 [except Article 5A] NMSA 1978]. The school district, in conjunction with the charter school, may establish a limit for student transportation to and from the charter school site not to extend beyond the school district boundary.

J. A charter school shall be a nonsectarian, nonreligious and non-home-based public school.

K. Except as otherwise provided in the Public School Code, a charter school shall not charge tuition or have admission requirements.

L. With the approval of the chartering authority, a single charter school may maintain separate facilities at two or more locations within the same school district; but, for purposes of calculating program units pursuant to the Public School Finance Act [Chapter 22, Article 8 NMSA 1978], the separate facilities shall be treated together as one school.

M. A charter school shall be subject to the provisions of Section 22-2-8 NMSA 1978 and the Assessment and Accountability Act [Chapter 22, Article 2C NMSA 1978].

N. Within constitutional and statutory limits, a charter school may acquire and dispose of property; provided that, upon termination of the charter, all assets of the locally chartered charter school shall revert to the local school board and all assets of the state-chartered charter school shall revert to the state, except that, if all or any portion of a state-chartered charter school facility is financed with the proceeds of general obligation bonds issued by a local school board, the facility shall revert to the local school board.

O. The governing body of a charter school may accept or reject any charitable gift, grant, devise or bequest; provided that no such gift, grant, devise or bequest shall be accepted if subject to any condition contrary to law or to the terms of the charter. The particular gift, grant, devise or bequest shall be considered an asset of the charter school to which it is given.

P. The governing body may contract and sue and be sued. A local school board shall not be liable for any acts or omissions of the charter school.

Q. A charter school shall comply with all state and federal health and safety requirements applicable to public schools, including those health and safety codes relating to educational

building occupancy.

R. A charter school is a public school that may contract with a school district or other party for provision of financial management, food services, transportation, facilities, education-related services or other services. The governing body shall not contract with a for-profit entity for the management of the charter school.

S. To enable state-chartered charter schools to submit required data to the department, an accountability data system shall be maintained by the department.

T. A charter school shall comply with all applicable state and federal laws and rules related to providing special education services. Charter school students with disabilities and their parents retain all rights under the federal Individuals with Disabilities Education Act and its implementing state and federal rules. Each charter school is responsible for identifying, evaluating and offering a free appropriate public education to all eligible children who are accepted for enrollment in that charter school. The state-chartered charter school, as a local educational agency, shall assume responsibility for determining students' needs for special education and related services. The division may promulgate rules to implement the requirements of this subsection.

History: Laws 1999, ch. 281, § 4; 2000, ch. 82, § 2; 2001, ch. 348, § 1; 2003, ch. 153, § 32; 2005, ch. 221, § 2; 2006, ch. 94, § 31; 2007, ch. 366, § 16; 2011, ch. 14, § 1.

**Cross references.** — For the Human Rights Act, see 28-1-1 NMSA 1978.

For the Public School Facilities Authority, see 22-20-1 NMSA 1978.

For the Public School Capital Outlay Act, see 22-24-1 NMSA 1978.

For the Public School Capital Improvements Act, see 24-25-1 NMSA 1978.

For Public School Buildings Act, see 22-26-1 NMSA 1978.

For the federal Individuals with Disabilities Education Act, see 20 U.S.C. § 1400.

**The 2011 amendment**, effective July 1, 2012, prohibited discrimination based on physical or mental handicap, serious medical condition, sex, gender identity, sexual orientation and spousal affiliation; and prohibited a member of a local school board from being a member of the governing body of a charter school or being employed by a charter school in the school board's school district.

**The 2007 amendment**, effective July 1, 2007, amended Subsection F to authorize reasonable lease payments for the use of school district facilities by charter schools provided that the payments do not exceed the lease reimbursement rate specified in 22-24-4 NMSA 1978 and that the payments are not considered to be cash balance in calculations under 22-8-41 NMSA 1978 and amended Subsection N to provide that upon the termination of the charter of a chartered school, the assets financed by general obligation bonds issued by the school district shall revert to the local school board.

**The 2006 amendment**, effective July 1, 2007, added the condition in Subsection B that a governing body must have at least five members; provided in Paragraph (1) of Subsection C that operations are subject to audit pursuant to the Audit Act; in Subsection E, added the qualification that the conversion

school must be chartered before July 1, 2007 and added the condition that the use of equipment and facilities is subject to Subsection F; provided in Subsection F that the facilities provided to a charter school must meet all occupancy standards specified by the public school capital outlay council; changed "charter school" to "locally chartered charter school" in Subsections G through I; changed "school district" to "chartering authority" in Subsection L; in Subsection N, added the qualification that the acquisition and disposition of property must be within constitutional and statutory limits and that all assets of state-chartered schools will revert to the state, added Subsection R to provide for contracting authority of charter schools; added Subsection S to require an accountability data system; and added Subsection T to provide for special education services.

**The 2005 amendment**, effective July 1, 2005, provided in Subsection B that no member of a governing body of a school that is initially approved or whose charter is renewed on or after July 1, 2005 shall serve on the governing body of another charter school; provided in Subsection D that a charter school may contract with the state and its political subdivisions, the federal government or its agencies and a tribal government; provided in Subsection D that the facilities of a charter school must meet the standards of 22-8B-4.2 NMSA 1978; deleted the former provision in Subsection E which provided for the use by charter schools of school district facilities; provided in Subsection E that a conversion school may choose to continue using school district facilities and equipment; added Subsection F to provide for the use by charter schools of school district facilities; authorized a charter school in Subsection G to pay the costs of operation and maintenance of its facilities and to contract with a school district for facility operation and maintenance services; added Subsection H to provide that charter school facilities are eligible for state and local capital outlay funds and shall be included in the school district's five-year facilities plan; deleted the former provision of Subsection G, which provided that a charter school may negotiate with a school district for capital expenditures; added Subsection L to provide that a single charter school may maintain separate facilities at two or more locations, but that all locations shall be deemed to be a single location for purposes of calculating program units pursuant to the Public School Finance Act; and provided in Subsection Q that applicable health and safety requirements include health and safety codes relating to educational building occupancy.

**The 2003 amendment**, effective April 4, 2003, deleted "local" preceding "school district" throughout the section; and in Subsection J substituted "Section" for "Sections 22-1-6 and" preceding "22-2-8" near the middle and inserted "and the Assessment and Accountability Act" at the end.

**The 2001 amendment**, effective June 15, 2001, in Subsection F, substituted "shall" for "may" in the first sentence and added the second sentence.

**The 2000 amendment**, effective March 7, 2000, deleted former Subsection B, relating to enrollment procedures at start-up charter schools, and redesignated the remaining subsections accordingly.

## ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — Validity, construction, and application of statute or regulation governing charter schools, 78 A.L.R.5th 533.

### 22-8B-4.1. Charter schools' enrollment procedures.

A. Start-up schools and conversion schools are subject to the following enrollment procedures:

(1) a start-up school may either enroll students on a first-come, first-served basis or through a lottery selection process if the total number of applicants exceeds the number of spaces available at the start-up school; and

(2) a conversion school shall give enrollment preference to students who are enrolled in the public school at the time it is converted into a charter school and to siblings of students admitted to or attending the charter school. The conversion school may either enroll all other students on a first-come, first-served basis or through a lottery selection process if the total number of applicants exceeds the number of spaces available at the conversion school.

B. In subsequent years of its operation, a charter school shall give enrollment preference to:

(1) students who have been admitted to the charter school through an appropriate admission process and remain in attendance through subsequent grades; and

(2) siblings of students already admitted to or attending the same charter school.

**History:** 1978 Comp., § 22-8B-4.1, enacted by Laws 2000, ch. 82, § 3.

#### **22-8B-4.2. Charter school facilities; standards.**

A. The facilities of a charter school that is approved on or after July 1, 2005 and before July 1, 2015 shall meet educational occupancy standards required by applicable New Mexico construction codes.

B. The facilities of a charter school whose charter has been renewed at least once shall be evaluated, prioritized and eligible for grants pursuant to the Public School Capital Outlay Act [Chapter 22, Article 24 NMSA 1978] in the same manner as all other public schools in the state; provided that for charter school facilities in leased facilities, grants may be used to provide additional lease payments for leasehold improvements made by the lessor.

C. On or after July 1, 2011, a new charter school shall not open and an existing charter school shall not relocate unless the facilities of the new or relocated charter school, as measured by the New Mexico condition index, receive a condition rating equal to or better than the average condition for all New Mexico public schools for that year or the charter school demonstrates, within eighteen months of occupancy or relocation of the charter, the way in which the facilities will achieve a rating equal to or better than the average New Mexico condition index.

D. On or after July 1, 2015, a new charter school shall not open and an existing charter shall not be renewed unless the charter school:

(1) is housed in a building that is:

(a) owned by the charter school, the school district, the state, an institution of the state, another political subdivision of the state, the federal government or one of its agencies or a tribal government; or

(b) subject to a lease-purchase arrangement that has been entered into and approved

pursuant to the Public School Lease Purchase Act [Chapter 22, Article 26A NMSA 1978]; or

(2) if it is not housed in a building described in Paragraph (1) of this subsection, demonstrates that:

(a) the facility in which the charter school is housed meets the statewide adequacy standards developed pursuant to the Public School Capital Outlay Act and the owner of the facility is contractually obligated to maintain those standards at no additional cost to the charter school or the state; and

(b) either: 1) public buildings are not available or adequate for the educational program of the charter school; or 2) the owner of the facility is a nonprofit entity specifically organized for the purpose of providing the facility for the charter school.

E. Without the approval of the public school facilities authority pursuant to Section 22-20-1 NMSA 1978, a charter school shall not enter into a lease-purchase agreement.

F. The public school capital outlay council:

(1) shall determine whether facilities of a charter school meet the educational occupancy standards pursuant to the requirements of Subsection A of this section or the requirements of Subsections B, C and D of this section, as applicable; and

(2) upon a determination that specific requirements are not appropriate or reasonable for a charter school, may grant a variance from those requirements for that charter school.

History: Laws 2005, ch. 221, § 3; 2005, ch. 274, § 2; 2007, ch. 366, § 17; 2009, ch. 258, § 1; 2011, ch. 69, § 2.

**Cross references.** — For the Public School Capital Outlay Council, see 22-24-6 NMSA 1978.

**The 2011 amendment**, effective July 1, 2011, added Subsection C to require new and relocated charter schools to use facilities that meet the average condition of public school facilities or to demonstrate the way in which the facilities will achieve the average condition of public school facilities; and added Subsection E to require the public school facilities authority to approve lease-purchase agreements.

**The 2009 amendment**, effective April 8, 2009, in Subsection A, after "and before", changed "July 1, 2010" to "July 1, 2015"; in Subsection B, after "charter school", deleted "that is in existence, or has been approved, prior to July 1, 2005" and added "whose charter has been renewed at least once"; after "grants may be used", deleted "as" and added "to provide"; and after "leasehold improvements", added "made by the lessor"; in Subsection C, after "July 1", deleted "2010, an application for a charter shall not be approved" and added "2015, a new charter school shall not open", in Paragraph (1) of Subsection C, after "housed in a", deleted "public"; deleted former Subparagraph (b) of Paragraph (1) of Subsection C, which provided that the building must be eligible for grants pursuant to the Public School Capital Outlay Act; deleted former Paragraph (2) of Subsection C, which provided that the building must meet statewide adequacy standards and be leased with an option to purchase; added Subparagraph (b) of Paragraph (1) of Subsection C; and in Paragraph (1) of Subsection D, after "Subsection A of this section", deleted "shall determine whether facilities of a charter school meet".

**The 2007 amendment**, effective July 1, 2007, added Paragraph (2) of Subsection C to require charter

schools to meet the statewide adequacy standards for buildings on or after July 1, 2010.

### **22-8B-5. Charter schools; status; local school board authority.**

A. The local school board may waive only locally imposed school district requirements for locally chartered charter schools.

B. A state-chartered charter school is exempt from school district requirements. A state-chartered charter school is responsible for developing its own written policies and procedures in accordance with this section.

C. The department shall waive requirements or rules and provisions of the Public School Code [Chapter 22 [except Article 5A] NMSA 1978] pertaining to individual class load, teaching load, length of the school day, staffing patterns, subject areas, purchase of instructional material, evaluation standards for school personnel, school principal duties and driver education. The department may waive requirements or rules and provisions of the Public School Code pertaining to graduation requirements. Any waivers granted pursuant to this section shall be for the term of the charter granted but may be suspended or revoked earlier by the department.

D. A charter school shall be a public school accredited by the department and shall be accountable to the chartering authority for purposes of ensuring compliance with applicable laws, rules and charter provisions.

E. A local school board shall not require any employee of the school district to be employed in a charter school.

F. A local school board shall not require any student residing within the geographic boundary of its district to enroll in a charter school.

G. A student who is suspended or expelled from a charter school shall be deemed to be suspended or expelled from the school district in which the student resides.

History: Laws 1999, ch. 281, § 5; 2006, ch. 94, § 32.

**Cross references.** — For the Public School Capital Outlay Council, see 22-24-6 NMSA 1978.

**The 2006 amendment**, effective July 1, 2007, provided in Subsection A for waiver of requirements for locally chartered charter schools; deleted former Subsection B; added a new Subsection B to provide that a state-chartered charter schools is exempt form school district requirements and is responsible for developing policies and procedures; and in Subsection C (formerly Subsection B), provided that the department shall waive requirements for class load, teaching load, length of school day, staffing, subject areas and instructional material.

#### **22-8B-5.1. Governing body training.**

The department shall develop a mandatory training course for all governing body members that explains department rules, policies and procedures, statutory powers and duties of governing boards, legal concepts pertaining to public schools, finance and budget and other matters deemed

relevant by the department. The department shall notify the governing body members of the dates of the training courses.

History: Laws 2009, ch. 18, § 1.

**Effective dates.** — Laws 2009, ch. 18 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 19, 2009, 90 days after the adjournment of the legislature.

### **22-8B-5.2. Governing body conflicts of interest.**

A. A person shall not serve as a member of a governing body of a charter school if the person or an immediate family member of the person is an owner, agent of, contractor with or otherwise has a financial interest in a for-profit or nonprofit entity with which the charter school contracts directly, for professional services, goods or facilities. A violation of this subsection renders the contract between the person or the person's immediate family member and the charter school voidable at the option of the chartering authority, the department or the governing body. A person who knowingly violates this subsection may be individually liable to the charter school for any financial damage caused by the violation.

B. No member of a governing body or employee, officer or agent of a charter school shall participate in selecting, awarding or administering a contract with the charter school if a conflict of interest exists. A conflict of interest exists when the member, employee, officer or agent or an immediate family member of the member, employee, officer or agent has a financial interest in the entity with which the charter school is contracting. A violation of this subsection renders the contract voidable.

C. Any employee, agent or board member of the chartering authority who participates in the initial review, approval, ongoing oversight, evaluation or charter renewal process of a charter school is ineligible to serve on the governing body of the charter school chartered by the chartering authority.

D. As used in this section, "immediate family member" means spouse, father, father-in-law, mother, mother-in-law, son, son-in-law, daughter, daughter-in-law, brother, brother-in-law, sister, sister-in-law or any other relative who is financially supported.

History: Laws 2011, ch. 14, § 7.

**Effective dates.** — Laws 2011, ch. 14, § 10 made Laws 2011, ch. 14, § 7 effective July 1, 2012.

### **22-8B-5.3. Chartering authority; powers; duties; liability.**

A chartering authority shall:

- A. evaluate charter applications;
- B. actively pursue the utilization of charter schools to satisfy identified education needs and

promote a diversity of educational choices;

C. approve charter applications that meet the requirements of the Charter Schools Act;

D. decline to approve charter applications that fail to meet the requirements of the Charter Schools Act or are otherwise inadequate;

E. negotiate and execute, in good faith, charter contracts that meet the requirements of the Charter Schools Act with each approved charter school;

F. monitor, in accordance with the requirements of the Charter Schools Act and the terms of the charter contract, the performance and legal compliance of charter schools under their authority;

G. determine whether a charter school merits suspension, revocation or nonrenewal; and

H. develop and maintain chartering policies and practices consistent with nationally recognized principles and standards for quality charter authorizing in all major areas of authorizing, including:

- (1) organizational capacity and infrastructure;
- (2) evaluating charter applications;
- (3) performance contracting;
- (4) charter school oversight and evaluation; and
- (5) charter school suspension, revocation and renewal processes.

History: Laws 2011, ch. 14, § 8.

**Effective dates.** — Laws 2011, ch. 14, § 10 made Laws 2011, ch. 14, § 8 effective July 1, 2012.

**22-8B-6. Charter school requirements; application process; authorization; state board of finance designation required; public hearings; subcommittees.**

A. A local school board has the authority to approve the establishment of a charter school within the school district in which it is located.

B. No later than the second Tuesday of January of the year in which an application will be filed, the organizers of a proposed charter school shall provide written notification to the commission and the school district in which the charter school is proposed to be located of their intent to establish a charter school. Failure to notify may result in an application not being accepted.

C. A charter school applicant shall apply to either a local school board or the commission for a charter. If an application is submitted to a chartering authority, it must process the application. Applications for initial charters shall be submitted between June 1 and July 1 to be eligible for consideration for the following fiscal year; provided that the July 1 deadline may be waived upon agreement of the applicant and the chartering authority.

D. An application shall include the total number of grades the charter school proposes to provide, either immediately or phased. A charter school may decrease the number of grades it eventually offers, but it shall not increase the number of grades or the total number of students proposed to be served in each grade.

E. An application shall include a detailed description of the charter school's projected facility needs, including projected requests for capital outlay assistance that have been approved by the director of the public school facilities authority or the director's designee. The director shall respond to a written request for review from a charter applicant within forty-five days of the request.

F. An application may be made by one or more teachers, parents or community members or by a public post-secondary educational institution or nonprofit organization. Municipalities, counties, private post-secondary educational institutions and for-profit business entities are not eligible to apply for or receive a charter.

G. An initial application for a charter school shall not be made after June 30, 2007 if the proposed charter school's proposed enrollment for all grades or the proposed charter school's proposed enrollment for all grades in combination with any other charter school's enrollment for all grades would equal or exceed ten percent of the total MEM of the school district in which the charter school will be geographically located and that school district has a total enrollment of not more than one thousand three hundred students.

H. A state-chartered charter school shall not be approved for operation unless its governing body has qualified to be a board of finance.

I. The chartering authority shall receive and review all applications for charter schools submitted to it. The chartering authority shall not charge application fees.

J. The chartering authority shall hold at least one public hearing in the school district in which the charter school is proposed to be located to obtain information and community input to assist it in its decision whether to grant a charter school application. The chartering authority may designate a subcommittee of no fewer than three members to hold the public hearing, and, if so, the hearing shall be transcribed for later review by other members of the chartering authority. Community input may include written or oral comments in favor of or in opposition to the application from the applicant, the local community and, for state-chartered charter schools, the local school board and school district in whose geographical boundaries the charter school is proposed to be located.

K. The chartering authority shall rule on the application for a charter school in a public meeting by September 1 of the year the application was received; provided, however, that prior to ruling on the application for which a designated subcommittee was used, any member of the chartering authority who was not present at the public hearing shall receive the transcript of the public hearing together with documents submitted for the public hearing. If not ruled upon by that date, the charter application shall be automatically reviewed by the secretary in accordance

with the provisions of Section 22-8B-7 NMSA 1978. The charter school applicant and the chartering authority may, however, jointly waive the deadlines set forth in this section.

L. A chartering authority may approve, approve with conditions or deny an application. A chartering authority may deny an application if:

- (1) the application is incomplete or inadequate;
- (2) the application does not propose to offer an educational program consistent with the requirements and purposes of the Charter Schools Act;
- (3) the proposed head administrator or other administrative or fiscal staff was involved with another charter school whose charter was denied or revoked for fiscal mismanagement or the proposed head administrator or other administrative or fiscal staff was discharged from a public school for fiscal mismanagement;
- (4) for a proposed state-chartered charter school, it does not request to have the governing body of the charter school designated as a board of finance or the governing body does not qualify as a board of finance; or
- (5) the application is otherwise contrary to the best interests of the charter school's projected students, the local community or the school district in whose geographic boundaries the charter school applies to operate.

M. If the chartering authority denies a charter school application or approves the application with conditions, it shall state its reasons for the denial or conditions in writing within fourteen days of the meeting. If the chartering authority grants a charter, the approved charter shall be provided to the applicant together with any imposed conditions.

N. A charter school that has received a notice from the chartering authority denying approval of the charter shall have a right to a hearing by the secretary as provided in Section 22-8B-7 NMSA 1978.

History: Laws 1999, ch. 281, § 6; 2005, ch. 221, § 4; 2006, ch. 94, § 33; 2007, ch. 198, § 1; 2009, ch. 6, § 1; 2009, ch. 12, § 1; 2011, ch. 69, § 3.

**The 2011 amendment**, effective July 1, 2011, in Subsection E, required the director of the public school facilities authority or the director's designee to review and approve requests by charter schools for capital outlay assistance within forty-five days.

**The 2009 amendment**, effective June 19, 2009, in Subsection J, permitted a chartering authority to designate a subcommittee to hold public hearings; and in Subsection K, provided that prior to ruling on an application for which a subcommittee was used, any member of a chartering authority who was not present at the public hearing shall receive the transcript of the public hearing and documents submitted for the public hearing.

**The 2007 amendment**, effective April 2, 2007, prohibited the filing of an application for a charter school after June 2007 if the school's proposed enrollment for all grades in combination with any other charter school's enrollment for all grades will equal or exceed ten percent of the total MEM of the school district.

**The 2006 amendment**, effective July 1, 2007, added Subsection B to provide advance notice to the commission and the school district of intent to establish a charter school; in Subsection C provided that the chartering authority must process applications submitted to it and changed "local school board" to "chartering authority"; added Subsection D to provide for the number of grades of charter schools and changed the number of grades; provided in Subsection E (formerly Subsection C) that the application shall include a detailed description of the projected capital outlay needs; provided in Subsection F (formerly Subsection D) that an application may be made by a public post-secondary educational institution or nonprofit organization and that certain institutions and entities are not eligible to apply for or to receive a charter; added Subsection G to prohibit applications after June 30, 2007 under certain circumstances; added Subsection H to require the charter school to qualify as a board of finance; deleted former Subsection E, which provided for applications for conversion schools; in Subsection I (formerly Subsection F) changed "local school board" to "chartering authority" and deleted the provision that if an application is incomplete, the board shall request the necessary information from the applicant; in Subsection J (formerly Subsection G), changed "local school board" to "chartering authority", requires a public meeting in the school district in which the charter school is proposed to be located, and provides for community input; deleted former Subsection H, which provided for an appeal by an applicant to the secretary; added Subsection K to provide for the approval and denial of an application; in Subsection L (formerly Subsection I), changed "local school board" to "chartering authority", required written reasons within fourteen days after a meeting, deleted the requirement that a copy of the approved charter be sent within fifteen days after granting the charter and added the provision that the approved charter be provided to the applicant together with any imposed conditions; and added Subsection M to provide for a hearing by the secretary if an application is denied.

**The 2005 amendment**, effective July 1, 2005, changed the application deadline from October 1 to July 1 and changed "school year" to "fiscal year" in Subsection B; added Subsection C to provide that an application shall include a request for capital outlay funding; and provided in Subsection I that if the local school board approves the application with conditions, it shall state the reasons for the conditions.

## **22-8B-7. Appeal of denial, nonrenewal, suspension or revocation; procedures.**

A. The secretary, upon receipt of a notice of appeal or upon the secretary's own motion, shall review decisions of a chartering authority concerning charter schools in accordance with the provisions of this section.

B. A charter applicant or governing body that wishes to appeal a decision of the chartering authority concerning the denial, nonrenewal, suspension or revocation of a charter school or the imposition of conditions that are unacceptable to the charter school or charter school applicant shall provide the secretary with a notice of appeal within thirty days after the chartering authority's decision. The charter school applicant or governing body bringing the appeal shall limit the grounds of the appeal to the grounds for denial, nonrenewal, suspension or revocation or the imposition of conditions that were specified by the chartering authority. The notice shall include a brief statement of the reasons the charter school applicant or governing body contends the chartering authority's decision was in error. Except as provided in Subsection E of this section, the appeal and review process shall be as follows within sixty days after receipt of the notice of appeal, the secretary, at a public hearing that may be held in the school district in which the charter school is located or in which the proposed charter school has applied for a charter,

shall review the decision of the chartering authority and make findings. If the secretary finds that the chartering authority acted arbitrarily or capriciously, rendered a decision not supported by substantial evidence or did not act in accordance with law, the secretary may reverse the decision of the chartering authority and order the approval of the charter with or without conditions. The decision of the secretary shall be final.

C. The secretary, on the secretary's own motion, may review a chartering authority's decision to grant a charter. Within sixty days after the making of a motion to review by the secretary, the secretary, at a public hearing that may be held in the school district in which the proposed charter school that has applied for a charter will be located, shall review the decision of the chartering authority and determine whether the decision was arbitrary or capricious or whether the establishment or operation of the proposed charter school would:

- (1) violate any federal or state laws concerning civil rights;
- (2) violate any court order; or
- (3) threaten the health and safety of students within the school district.

D. If the secretary determines that the charter would violate the provisions set forth in Subsection C of this section, the secretary shall deny the charter application. The secretary may extend the time lines established in this section for good cause. The decision of the secretary shall be final.

E. If a chartering authority denies an application or refuses to renew a charter because the public school capital outlay council has determined that the facilities do not meet the standards required by Section 22-8B-4.2 NMSA 1978, the charter school applicant or charter school may appeal the decision to the secretary as otherwise provided in this section; provided that the secretary shall reverse the decision of the chartering authority only if the secretary determines that the decision was arbitrary, capricious, not supported by substantial evidence or otherwise not in accordance with the law.

F. A person aggrieved by a final decision of the secretary may appeal the decision to the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978.

History: Laws 1999, ch. 281, § 7; 2005, ch. 221, § 5; 2006, ch. 94, § 34.

**Cross references.** — For the Public School Capital Outlay Council, see 22-24-6 NMSA 1978.

For the secretary of public education, see 9-24-5 NMSA 1978.

For the secretary of public education, see 9-24-5 NMSA 1978.

For appeals to the district court, see 1-074 NMRA.

**The 2006 amendment**, effective July 1, 2007, changed "local school board" to "chartering authority" in Subsections A through C and E; in Subsection B, deleted the provision which provided for remand of the decision of the local school board if the secretary finds the decision contrary to the best interests of the students, school district or community with directions to approve the application and added a new

provision which provides for the reversal of a decision of the chartering authority if the decision is arbitrary, capricious, not supported by substantial evidence or not in accordance with the law; deleted the provision of former Paragraph (2) of Subsection B which provided that within thirty days after remand the application shall be approved; deleted Paragraph (4) of Subsection C which provided for review to determine if the charter school would violate Section 22-8B-11 NMSA 1978; and added Subsection F to provide for an appeal to the district court.

**The 2005 amendment**, effective July 1, 2005, changed "state board" to "secretary"; provided in Subsection B that the appellant shall limit the grounds of the appeal to grounds that include the imposition of conditions that were specified by the local school board, that the notice shall include a statement of the reasons the governing board contends the local school board's decision was in error, and that except as provided in Subsection E, the appeal and review process shall consist of the procedure specified in Subsections B(1) and (2); provided in Subsection B(1) that the hearing shall be held in the school district in which the charter school is located; and added Subsection E to provide for the appeal by a charter school of a decision to deny an application or to refuse to renew a charter because the public school capital outlay council has determine the facilities does not meet statutory standards and to prescribe a standard of review by the secretary.

### **22-8B-8. Charter application; contents.**

The charter school application shall include:

- A. the mission statement of the charter school;
- B. the goals, objectives and student performance outcomes to be achieved by the charter school;
- C. a description of the charter school's educational program, student performance standards and curriculum that must meet or exceed the department's educational standards and must be designed to enable each student to achieve those standards;
- D. a description of the way a charter school's educational program will meet the individual needs of the students, including those students determined to be at risk;
- E. a description of the charter school's plan for evaluating student performance, the types of assessments that will be used to measure student progress toward achievement of the state's standards and the school's student performance outcomes, the time line for achievement of the outcomes and the procedures for taking corrective action in the event that student performance falls below the standards;
- F. evidence that the plan for the charter school is economically sound, including a proposed budget for the term of the charter and a description of the manner in which the annual audit of the financial and administrative operations of the charter school is to be conducted;
- G. evidence that the fiscal management of the charter school complies with all applicable federal and state laws and rules relative to fiscal procedures;
- H. evidence of a plan for the displacement of students, teachers and other employees who will not attend or be employed in the conversion school;
- I. a description of the governing body and operation of the charter school, including:

- (1) how the governing body will be selected;
  - (2) qualification and terms of members, how vacancies on the governing body will be filled and procedures for changing governing body membership; and
  - (3) the nature and extent of parental, professional educator and community involvement in the governance and operation of the school;
- J. an explanation of the relationship that will exist between the proposed charter school and its employees, including evidence that the terms and conditions of employment will be addressed with affected employees and their recognized representatives, if any;
- K. the employment and student discipline policies of the proposed charter school;
- L. an agreement between the charter school and the chartering authority regarding their respective legal liability and applicable insurance coverage;
- M. a description of how the charter school plans to meet the transportation and food service needs of its students;
- N. a description of both the discretionary waivers and the waivers provided for in Section 22-8B-5 NMSA 1978 that the charter school is requesting or that will be provided from the local school board or the department and the charter school's plan for addressing and using these waiver requests; and
- O. a description of the facilities the charter school plans to use.

History: Laws 1999, ch. 281, § 8; 2006, ch. 94, § 35; 2011, ch. 14, § 2.

**Cross references.** — For transfer of powers and duties of former state board of education, see 9-24-15 NMSA 1978.

For the Assessment and Accountability Act, see 22-2C-1 NMSA 1978.

For the Public School Finance Act, see 22-8-1 NMSA 1978.

For School Personnel Act, see 22-10A-1 NMSA 1978.

For educational standards, see 22-13-1 to 22-13-27 NMSA 1978.

**The 2011 amendment**, effective July 1, 2012, required that the applications of all charter schools contain the information specified in this section; required that applications contain a statement of student performance outcomes to be achieved by the school, an agreement between the charter school and the chartering authority regarding legal liability and insurance coverage, and a description of discretionary waivers and waivers under Section 22-8B-5 NMSA 1978 that will be provided and the school's planned use of the waivers.

**The 2006 amendment**, effective July 1, 2007, changed "local school board" to "chartering authority"; deleted conversion schools in Subsection A; in Subsection C, changed "state board of education" to "department"; added Paragraph (2) of Subsection I to require inclusion of qualifications and terms of members, the method of filling vacancies and procedures for changing membership; in Paragraph (3) of Subsection I, deleted a statement of the relationship between the governing body and the local school

board; in Subsection L, added the qualification referring to a locally chartered charter school; and in Subsection P, changed "local school board" to "chartering authority".

### **22-8B-9. Charter school contract; contents; rules.**

A. The chartering authority shall enter into a contract with the governing body of the applicant charter school within thirty days of approval of the charter application. The charter contract shall be the final authorization for the charter school and shall be part of the charter. If the chartering authority and the applicant charter school fail to agree upon the terms of or enter into a contract within thirty days of the approval of the charter application, either party may appeal to the secretary to finalize the terms of the contract; provided that such appeal must be provided in writing to the secretary within forty-five days of the approval of the charter application. Failure to enter into a charter contract or appeal to the secretary pursuant to this section precludes the chartering authority from chartering the school.

B. The charter contract shall include:

(1) all agreements regarding the release of the charter school from department and local school board rules and policies, including discretionary waivers and waivers provided for in Section 22-8B-5 NMSA 1978;

(2) any material term of the charter application as determined by the parties to the contract;

(3) the mission statement of the charter school and how the charter school will report on implementation of its mission;

(4) the chartering authority's duties to the charter school and liabilities of the chartering authority as provided in Section 8 of this 2011 act [22-8B-5.3 NMSA 1978];

(5) a statement of admission policies and procedures;

(6) signed assurances from the charter school's governing body members regarding compliance with all federal and state laws governing organizational, programmatic and financial requirements applicable to charter schools;

(7) the criteria, processes and procedures that the chartering authority will use for ongoing oversight of operational, financial and academic performance of the charter school;

(8) a detailed description of how the chartering authority will use the withheld two percent of the school-generated program cost as provided in Section 22-8B-13 NMSA 1978;

(9) the types and amounts of insurance liability coverage to be obtained by the charter school;

(10) the term of the contract;

(11) the process and criteria that the chartering authority intends to use to annually monitor and evaluate the fiscal, overall governance and student performance of the charter school, including the method that the chartering authority intends to use to conduct the evaluation

as required by Section 22-8B-12 NMSA 1978;

(12) the dispute resolution processes agreed upon by the chartering authority and the charter school, provided that the processes shall, at a minimum, include:

(a) written notice of the intent to invoke the dispute resolution process, which notice shall include a description of the matter in dispute;

(b) a time limit for response to the notice and cure of the matter in dispute;

(c) a procedure for selection of a neutral third party to assist in resolving the dispute;

(d) a process for apportionment of all costs related to the dispute resolution process;

and

(e) a process for final resolution of the issue reviewed under the dispute resolution process;

(13) the criteria, procedures and time lines, agreed upon by the charter school and the chartering authority, addressing charter revocation and deficiencies found in the annual status report pursuant to the provisions of Section 22-8B-12 NMSA 1978;

(14) if the charter school contracts with a third-party provider, the criteria and procedures for the chartering authority to review the provider's contract and the charter school's financial independence from the provider;

(15) all requests for release of the charter school from department rules or the Public School Code [Chapter 22 NMSA 1978]. Within ten days after the contract is approved by the local school board, any request for release from department rules or the Public School Code shall be delivered by the local school board to the department. If the department grants the request, it shall notify the local school board and the charter school of its decision. If the department denies the request, it shall notify the local school board and the charter school that the request is denied and specify the reasons for denial;

(16) an agreement that the charter school will participate in the public school insurance authority;

(17) if the charter school is a state-chartered charter school, a process for qualification of and review of the school as a qualified board of finance and provisions for assurance that the school has satisfied any conditions imposed by the commission; and

(18) any other information reasonably required by either party to the contract.

C. The process for revision or amendment to the terms of the charter contract shall be made only with the approval of the chartering authority and the governing body of the charter school. If they cannot agree, either party may appeal to the secretary as provided in Subsection A of this Section.

History: Laws 1999, ch. 281, § 9; 2006, ch. 94, § 36; 2011, ch. 14, § 3.

**Cross references.** — For transfer of powers and duties of former state board of education, see

9-24-15 NMSA 1978.

**The 2011 amendment**, effective July 1, 2012, required that a chartering authority and a charter school enter into a contract as a condition to chartering the school; provided a procedure for finalizing a contract if the parties fail to timely enter into a contract and for amending a contract if the parties cannot agree upon amendments; and specified the minimum required contents of a contract.

**The 2006 amendment**, effective July 1, 2007, changed "local school board" to "chartering authority" in Subsection A; in Subsection B, deleted the reference to a contract between the charter school and the local school board and changed "school district" to "department", in Subsection C; added the qualification for locally chartered charter schools at the beginning of the first sentence and changed "state board" to "department"; deleted former Subsection D, which provided for waiver of certain Public School Code requirements for charter schools; in Subsection E (formerly Subsection F), changed "local school board" to "chartering authority"; and in Subsection F (formerly Subsection G), added the qualification for locally chartered charter schools at the beginning of the first sentence.

## ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — Validity, construction, and application of statute or regulation governing charter schools, 78 A.L.R.5th 533.

### 22-8B-9.1. Performance framework.

A. The performance provisions in the charter contract shall be based on a framework that clearly sets forth the academic and operations performance indicators, measures and metrics that will guide the chartering authority's evaluation of each charter school. The performance framework shall include indicators, measures and metrics for, at a minimum:

- (1) student academic performance;
- (2) student academic growth;
- (3) achievement gaps in both proficiency and growth between student subgroups;
- (4) attendance;
- (5) recurrent enrollment from year to year;
- (6) if the charter school is a high school, post-secondary readiness;
- (7) if the charter school is a high school, graduation rate;
- (8) financial performance and sustainability; and
- (9) governing body performance, including compliance with all applicable laws, rules and terms of the charter contract.

B. Annual performance targets shall be set by each chartering authority in consultation with its charter schools and shall be designed to help each charter school meet applicable federal, state and chartering authority expectations as set forth in the charter contracts to which the authority is a party.

C. The performance framework shall allow for the inclusion of additional rigorous, valid and reliable indicators proposed by a charter school to augment external evaluations of its performance, provided that the chartering authority shall approve the quality and rigor of such proposed indicators and the indicators are consistent with the purposes of the Charter Schools Act.

D. The performance framework shall require the disaggregation of all student performance data collected in compliance with this section by student subgroup, including gender, race, poverty status, special education or gifted status and English language learner.

E. The chartering authority shall collect, analyze and report all data from state assessment tests in accordance with the performance framework set forth in the charter contract for each charter school overseen by that chartering authority.

History: Laws 2011, ch. 14, § 4.

**Effective dates.** — Laws 2011, ch. 14, § 10 made Laws 2011, ch. 14, § 4 effective July 1, 2012.

#### **22-8B-10. Charter schools; employees.**

A. A charter school shall hire its own employees. The provisions of the School Personnel Act [Chapter 22, Article 10A NMSA 1978] shall apply to such employees. The head administrator of the charter school shall employ, fix the salaries of, assign, terminate and discharge all employees of the charter school.

B. The head administrator of a charter school shall not initially employ or approve the initial employment in any capacity of a person who is the spouse, father, father-in-law, mother, mother-in-law, son, son-in-law, daughter, daughter-in-law, brother, brother-in-law, sister or sister-in-law of a member of the governing body or the head administrator. The governing body may waive the nepotism rule for family members of a head administrator.

C. Nothing in this section shall prohibit the continued employment of a person employed on or before July 1, 2008.

History: Laws 1999, ch. 281, § 10; 2006, ch. 94, § 37; 2007, ch. 259, § 1; 2008, ch. 5, § 2; 2009, ch. 195, § 2.

**Cross references.** — For the Educational Retirement Act, see 22-11-1 NMSA 1978.

**The 2009 amendment,** effective June 19, 2009, in Subsection B, after "daughter-in-law", added "brother, brother-in-law, sister or sister-in-law".

**The 2008 amendment,** effective February 13, 2008, deleted the authorization of charter schools to authorize the governing board to make employment decisions.

**The 2007 amendment,** effective June 15, 2007, provided for employment decisions to be made by the head administrator and prohibits the head administrator from initially employing a person who is related to a member of the governing body or the head administrator.

The 2006 amendment, effective July 1, 2007, in Subsection A, deleted the qualification "notwithstanding the provisions of Section 22-5-4 NMSA 1978" at the beginning of the first sentence and added the provision regarding employment decisions; deleted former Subsection B, which provided for leave of absence for employees of a school district who are employed by a conversion school; deleted former Subsection C, which provided for longevity credit for employees on leave of absence; deleted former Subsection D, which provided retirement benefits for employees on leave of absence; deleted former Subsection E, which provided that a leave of absence is not a break of service with a school district; deleted former Subsection F, which provided for the return of employees to a school district; deleted former Subsection G, which provided for the effect of discharge or termination by a charter school; added a new Subsection B to prohibit nepotism; and added a new Subsection C to provide for continued employment of persons employed on or before July 1, 2007.

**22-8B-11. Charter schools; maximum number established.**

A. The commission shall authorize the approval of start-up charter schools.

B. No more than fifteen start-up schools may be established per year statewide. The number of charter school slots remaining in that year shall be transferred to succeeding years up to a maximum of seventy-five start-up schools in any five-year period.

History: Laws 1999, ch. 281, § 11; 2006, ch. 94, § 38.

**Cross references.** — For transfer of powers and duties of former state board of education, see 9-24-15 NMSA 1978.

The 2006 amendment, effective July 1, 2007, in Subsection A, changed "local school boards" to "commission" and in Subsection B, deleted the references to conversion schools and the provision that the state board notify the local school board when the limits set in this section are reached.

**22-8B-12. Charter schools; term; oversight and corrective actions; site visits; renewal of charter; grounds for nonrenewal or revocation.**

A. A charter school may be approved for an initial term of six years; provided that the first year shall be used exclusively for planning and not for completing the application. A charter may be renewed for successive periods of five years each. Approvals of less than five years may be agreed to between the charter school and the chartering authority.

B. During the planning year, the charter school shall file a minimum of three status reports with the chartering authority and the department for the purpose of demonstrating that the charter school's implementation progress is consistent with the conditions, standards and procedures of its approved charter. The report content, format and schedule for submission shall be agreed to by the chartering authority and the charter school and become part of the charter contract.

C. Prior to the end of the planning year, the charter school shall demonstrate that its facilities meet the requirements of Section 22-8B-4.2 NMSA 1978.

D. A chartering authority shall monitor the fiscal, overall governance and student

performance and legal compliance of the charter schools that it oversees, including reviewing the data provided by the charter school to support ongoing evaluation according to the charter contract. Every chartering authority may conduct or require oversight activities that allow the chartering authority to fulfill its responsibilities under the Charter Schools Act, including conducting appropriate inquiries and investigations; provided that the chartering authority complies with the provisions of the Charter Schools Act and the terms of the charter contract and does not unduly inhibit the autonomy granted to the charter schools that it governs.

E. As part of its performance review of a charter school, a chartering authority shall visit a charter school under its authority at least once annually to provide technical assistance to the charter school and to determine the status of the charter school and the progress of the charter school toward the performance framework goals in its charter contract.

F. If, based on the performance review conducted by the chartering authority pursuant to Subsection D of this section, a charter school's fiscal, overall governance or student performance or legal compliance appears unsatisfactory, the chartering authority shall promptly notify the governing body of the charter school of the unsatisfactory review and provide reasonable opportunity for the governing body to remedy the problem; provided that if the unsatisfactory review warrants revocation, the revocation procedures set forth in this section shall apply. A chartering authority may take appropriate corrective actions or exercise sanctions, as long as such sanctions do not constitute revocation, in response to the unsatisfactory review. Such actions or sanctions by the chartering authority may include requiring a governing body to develop and execute a corrective action plan with the chartering authority that sets forth time frames for compliance.

G. Every chartering authority shall submit an annual report to the division, including a performance report for each charter school that it oversees, in accordance with the performance framework set forth in the charter contract.

H. The department shall review the annual report received from the chartering authority to determine if the department or local school board rules and policies from which the charter school was released pursuant to the provisions of Section 22-8B-5 NMSA 1978 assisted or impeded the charter school in meeting its stated goals and objectives. The department shall use the annual reports received from the chartering authorities as part of its report to the governor, the legislative finance committee and the legislative education study committee as required by the Charter Schools Act.

I. No later than two hundred seventy days prior to the date in which the charter expires, the governing body may submit a renewal application to the chartering authority. A charter school may apply to a different chartering authority for renewal. The chartering authority shall rule in a public hearing on the renewal application no later than one hundred eighty days prior to the expiration of the charter.

J. A charter school renewal application submitted to the chartering authority shall contain:

(1) a report on the progress of meeting the academic performance, financial compliance and governance responsibilities of the charter school, including achieving the goals, objectives, student performance outcomes, state minimum educational standards and other terms of the charter contract, including the accountability requirements set forth in the Assessment and Accountability Act [Chapter 22, Article 2C NMSA 1978];

(2) a financial statement that discloses the costs of administration, instruction and other spending categories for the charter school that is understandable to the general public, that allows comparison of costs to other schools or comparable organizations and that is in a format required by the department;

(3) a copy of the charter contract executed in compliance with the provisions of Section 22-8B-9 NMSA 1978;

(4) a petition in support of the charter school renewing its charter status signed by not less than sixty-five percent of the employees in the charter school;

(5) a petition in support of the charter school renewing its charter status signed by at least seventy-five percent of the households whose children are enrolled in the charter school; and

(6) a description of the charter school facilities and assurances that the facilities are in compliance with the requirements of Section 22-8B-4.2 NMSA 1978.

K. A charter may be suspended, revoked or not renewed by the chartering authority if the chartering authority determines that the charter school did any of the following:

(1) committed a material violation of any of the conditions, standards or procedures set forth in the charter contract;

(2) failed to meet or make substantial progress toward achievement of the department's minimum educational standards or student performance standards identified in the charter contract;

(3) failed to meet generally accepted standards of fiscal management; or

(4) violated any provision of law from which the charter school was not specifically exempted.

L. The chartering authority shall develop processes for suspension, revocation or nonrenewal of a charter that:

(1) provide the charter school with timely notification of the prospect of suspension, revocation or nonrenewal of the charter and the reasons for such action;

(2) allow the charter school a reasonable amount of time to prepare and submit a response to the chartering authority's action; and

(3) require the final determination made by the chartering authority to be submitted to the department.

M. If a chartering authority suspends, revokes or does not renew a charter, the chartering authority shall state in writing its reasons for the suspension, revocation or nonrenewal.

N. A decision to suspend, revoke or not to renew a charter may be appealed by the governing body pursuant to Section 22-8B-7 NMSA 1978.

History: Laws 1999, ch. 281, § 12; 2005, ch. 221, § 6; 2006, ch. 94, § 39; 2010, ch. 48, § 1; 2011, ch. 14, § 5.

**Cross references.** — For transfer of powers and duties of former state board of education, see 9-24-15 NMSA 1978.

**The 2011 amendment**, effective July 1, 2012, required a chartering authority to monitor the performance of the charter schools it oversees, including visits to the school; permitted a chartering authority to take corrective actions and impose sanctions if a school's performance is unsatisfactory; required chartering authorities to submit an annual report to the charter school division that includes a performance report; required the department to review the annual report to determine how waivers of requirements affected the school's performance; and required chartering authorities to develop processes for suspension, revocation or nonrenewal of charters.

**The 2010 amendment**, effective May 19, 2010, added Subsection B and relettered succeeding subsections accordingly.

**The 2006 amendment**, effective July 1, 2007, in Subsection A, provided that the first year shall be used exclusively for planning and not for completing the application and changed "local school board" to "chartering authority"; added a new Subsection C to require demonstration of qualification as a board of finance and satisfaction of conditions imposed by the commission and to provide for the issuance of an authorization to commence operations; in Subsection D (formerly Subsection C), changed "January 1 of the year prior to the year the charter expires" to "two hundred seventy days prior to the date the charter expires"; changed "local school board" to "chartering authority", added the provision that a charter school may apply to a different chartering authority for renewal, and changed the date for ruling on a renewal application from March 1 of the fiscal year in which the charter expires to one hundred eighty days prior to the expiration of the charter; in Subsection E (formerly Subsection D), changed "local school board" to "chartering authority"; in Paragraph (5) of Subsection E (formerly Subsection D), changed "majority" to "at least seventy-five percent"; in Subsection F (formerly Subsection E), provided that a charter may be suspended and changes "local school board" to "chartering authority"; in Paragraph (2) of Subsection F (formerly Subsection E), changed "state board" to "department"; in Subsection G (formerly Subsection F), changed "local school board" to "chartering authority" and required written reasons for suspension of a charter; and in Subsection H (formerly Subsection G), provided for the appeal of the suspension of a charter.

**The 2005 amendment**, effective July 1, 2005, changed the initial term from five to six years and provided that the first year shall be used for planning; added Subsection B to provide that prior to the end of the planning year, the charter school shall demonstrate that its facilities meet statutory standards; provided in Subsection D(1) that an application for renewal shall contain a report on the progress in meeting the accountability requirements of the Assessment and Accountability Act; and added Subsection D(6) to provide that an application for renewal shall contain a description of the charter school facilities and assurances that the facilities comply with statutory standards.

### **22-8B-12.1. Charter school closure; chartering authority protocols; chartering authority**

© 2014 by the State of New Mexico. All rights reserved.

UCC Official Comments © by ALI & the NCCUSL. Reproduced with permission of the PEB for the UCC. All rights reserved.

**duties; distribution of assets.**

A. Prior to any charter school closure decision, the chartering authority shall develop a charter school closure protocol to ensure timely notification to parents, orderly transition of students and student records to new schools and proper disposition of school funds, property and assets in accordance with the provisions of Subsection C of this section. The protocol shall specify tasks, time lines and responsible parties, including delineating the respective duties of the charter school, the governing body and the chartering authority.

B. If a charter school is ordered closed for any reason, prior to closure, the chartering authority shall oversee and work with the closing school to ensure a smooth and orderly closure and transition for students and parents according to the closure protocol.

C. When a charter school is closed, the assets of the school shall be distributed first to satisfy outstanding payroll obligations for employees of the school, then to creditors of the school and then to the state treasury to the credit of the current school fund. If the assets of the school are insufficient to pay all parties to whom the schools owes compensation, the prioritization of the distribution of assets may be determined by decree of a court of law.

History: Laws 2011, ch. 14, § 6.

**Effective dates.** — Laws 2011, ch. 14, § 10 made Laws 2011, ch. 14, § 6 effective July 1, 2012.

**22-8B-13. Charter school financing.**

A. The amount of funding allocated to a charter school shall be not less than ninety-eight percent of the school-generated program cost. The school district or division may withhold and use two percent of the school-generated program cost for its administrative support of a charter school.

B. That portion of money from state or federal programs generated by students enrolled in a locally chartered charter school shall be allocated to that charter school serving students eligible for that aid. Any other public school program not offered by the locally chartered charter school shall not be entitled to the share of money generated by a charter school program.

C. When a state-chartered charter school is designated as a board of finance pursuant to Section 22-8-38 NMSA 1978, it shall receive state and federal funds for which it is eligible.

D. Charter schools may apply for all federal funds for which they are eligible.

E. All services centrally or otherwise provided by a local school district, including custodial, maintenance and media services, libraries and warehousing shall be subject to negotiation between the charter school and the school district. Any services for which a charter school contracts with a school district shall be provided by the district at a reasonable cost.

History: Laws 1999, ch. 281, § 13; 2006, ch. 94, § 40.

**The 2006 amendment**, effective July 1, 2007, provided in Subsection A for the withholding and use of two percent of school-generated program cost for administrative support of a charter school; in Subsection B, changed "charter school" to "locally chartered charter school"; added Subsection C to provide for the receipt of state and federal funds by state-chartered charter schools that are designated as a board of finance; and added Subsection D to provide that charter schools may apply for federal funds.

#### **22-8B-14. Charter schools stimulus fund created.**

A. The "charter schools stimulus fund" is created in the state treasury. Money in the fund is appropriated to the department of education [public education department] to provide financial support to charter schools, whether start-up or conversion, for initial start-up costs and initial costs associated with renovating or remodeling existing buildings and structures for expenditure in fiscal year 2000 and subsequent fiscal years. The fund shall consist of money appropriated by the legislature and grants, gifts, devises and donations from any public or private source. The department of education [public education department] shall administer the fund in accordance with rules adopted by the state board [department]. The department of education [public education department] may use up to three percent of the fund for administrative costs. Money in the fund shall not revert to the general fund at the end of a fiscal year.

B. If the charter school receives an initial grant and fails to begin operating a charter school within the next eighteen months, the charter school shall immediately reimburse the fund.

**History:** Laws 1999, ch. 281, § 14.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

Laws 2004, ch. 25, § 27, provided that all references to the superintendent of public instruction shall be deemed references to the secretary of public education and all references to the former state board of education or state department of education shall be deemed references to the public education department. See 9-24-15 NMSA 1978.

#### **22-8B-14.1. Repealed.**

**Repeals.** — Laws 2007, ch. 214, § 4 repealed 22-8B-14.1, as enacted by Laws 2007, ch. 214, § 3, relating to charter school capital outlay fund, effective July 1, 2012. For provisions of former section, see the 2011 NMSA 1978 on *NMONESOURCE.COM*.

Laws 2007, ch. 214, § 4 also provided that upon repeal, the proportion of the unencumbered balance of the charter school capital outlay fund attributable to proceeds of severance tax bonds shall revert to the severance tax bonding fund, and the remaining unencumbered balance shall revert to the general fund.

#### **22-8B-15. Repealed.**

**Repeals.** — Laws 2006, ch. 94, § 60 repealed 22-8B-15 NMSA 1978, as enacted by Laws 1999, ch.

281, § 15, relating to charter extensions, effective July 1, 2007. For provisions of former section, see the 2005 NMSA 1978 on *NMONESOURCE.COM*.

### **22-8B-16. Public education commission; powers and duties.**

The commission shall receive applications for initial chartering and renewals of charters for charter schools that want to be chartered by the state and approve or disapprove those charter applications. The commission may approve, deny, suspend or revoke the charter of a state-chartered charter school in accordance with the provisions of the Charter Schools Act. The chartering authority for a charter school existing on July 1, 2007 may be transferred to the commission; provided, however, that if a school chartered under a previous chartering authority chooses to transfer its chartering authority, it shall continue to operate under the provisions of that charter until its renewal date unless it is suspended or revoked by the commission. An application for a charter school filed with a local school board prior to July 1, 2007, but not approved, may be transferred to the commission on July 1, 2007.

History: Laws 2006, ch. 94, § 29.

**Cross references.** — For the public education commission, see 9-24-9 NMSA 1978 and N.M. Const., art. XII, § 6.

**Effective dates.** — Laws 2006, ch. 94, § 61 made Laws 2006, ch. 94, § 29 effective July 1, 2007.

### **22-8B-17. Charter schools division; duties.**

The "charter schools division" is created in the department. The division shall:

- A. provide staff support to the commission;
- B. provide technical support to all charter schools;
- C. review and approve state-chartered charter school budget matters; and
- D. make recommendations to the commission regarding the approval, denial, suspension or revocation of the charter of a state-chartered charter school.

History: Laws 2006, ch. 94, § 30.

**Cross references.** — For divisions of the public education department, see 9-24-4 NMSA 1978.

**Effective dates.** — Laws 2006, ch. 94, § 61 made Laws 2006, ch. 94, § 30 effective July 1, 2007.

#### **22-8B-17.1. Division; annual report.**

By December 1 annually, the division shall issue to the governor, the legislative finance committee and the legislative education study committee a report on the state's charter schools for the school year ending in the preceding calendar year, drawing from the annual reports

submitted by every chartering authority as well as any relevant data compiled by the division. The annual report shall include a comparison of the performance of charter school students with the performance of academically, ethnically and economically comparable groups of students in noncharter public schools. The report shall also include an assessment of the successes, challenges and areas for improvement in meeting the purposes of the Charter Schools Act, including the division's assessment of the sufficiency of funding for charter schools, the efficacy of the state formula for chartering authority funding and any suggested changes to state law or policy necessary to strengthen the state's charter schools. The annual report shall be published on the department's web site.

History: Laws 2011, ch. 14, § 9.

**Effective dates.** — Laws 2011, ch. 14, § 10 made Laws 2011, ch. 14, § 9 effective July 1, 2012.

---

## ARTICLE 8

### Public School Finance

Section	
22-8-1	Short title.
22-8-2	Definitions.
22-8-3	Office of education abolished; functions transferred.
22-8-4	Department; duties.
22-8-5	Rules; procedures.
22-8-5.1	Procurement, travel and gas cards.
22-8-6	Budgets; submission; failure to submit.
22-8-6.1	Charter school budgets.
22-8-7	Budgets; form.
22-8-7.1	Certain school district budgets.
22-8-8	Budgets; minimum student membership.
22-8-9	Budgets; minimum requirements.
22-8-10	Budgets; fixing the operating budget.
22-8-11	Budgets; approval of operating budget.
22-8-12	Operating budgets; amendments.
22-8-12.1	Membership projections and budget requests.
22-8-12.2	Repealed.
22-8-12.3	Local school board finance subcommittee; audit committee; membership; duties.
22-8-13	Reports.
22-8-13.1	School district and charter school audits; sanctions for not submitting timely audit reports.
22-8-13.2	Financial reporting.
22-8-14	Public school fund.
22-8-15	Allocation limitation.
22-8-16	Payment to school districts.
22-8-17	Program cost determination; required information.
22-8-18	Program cost calculation; local responsibility.
22-8-19	Early childhood education program units.
22-8-19.1	Preschool programs; selected districts.
22-8-20	Basic program units.
22-8-21	Special education program units.
22-8-22	Bilingual multicultural education program units.
22-8-23	Size adjustment program units.
22-8-23.1	Enrollment growth program units.
22-8-23.2	New district adjustment; additional program units.
22-8-23.3	At-risk program units.
22-8-23.4	National board for professional teaching standards; certified teachers program units.
22-8-23.5	Fine arts education program units.
22-8-23.6	Charter school student activities program unit.
22-8-23.7	Elementary physical education program units.
22-8-23.8	Home school student activities program unit.
22-8-23.9	Home schooled student program units.
22-8-24	Instructional staff training and experience index; definitions; factors; calculations.
22-8-25	State equalization guarantee distribution; definitions; determination of amount.
22-8-25.1	Additional per unit distribution from public school fund.
22-8-26	Transportation distribution.

- 22-8-27 Transportation equipment.
- 22-8-28 Repealed.
- 22-8-29 Transportation distributions; reports; payments.
- 22-8-29.1 Calculation of transportation allocation.
- 22-8-29.2 Repealed.
- 22-8-29.3 Repealed.
- 22-8-29.4 Transportation distribution adjustment factor.
- 22-8-29.5 Repealed.
- 22-8-29.6 Transportation emergency fund.
- 22-8-30 Supplemental distributions.
- 22-8-30.1 Recompiled.
- 22-8-30.2 Recompiled.
- 22-8-31 State-support reserve fund.
- 22-8-32 Current school fund; receipts; disposition.
- 22-8-33 Distribution of certain revenue.
- 22-8-34 Federal mineral leasing funds.
- 22-8-35 Tax anticipation certificates.
- 22-8-36 Certification of allocations; fund accounts.
- 22-8-37 Public school funds.
- 22-8-38 Boards of finance; designation.
- 22-8-39 Boards of finance; suspension.
- 22-8-40 Deposit of public school funds; distribution; interest.
- 22-8-40.1 Deposit of public school funds; providing exception on interest rate limitation for "NOW" accounts.
- 22-8-41 Restriction on operational funds; emergency accounts; cash balances.
- 22-8-42 Violation of act; penalties.
- 22-8-43 Public school reading proficiency fund; created.
- 22-8-44 Educator licensure fund; distribution; appropriation.
- 22-8-45 Teacher professional development fund.
- 22-8-46 Funding formula study task force created; membership; duties.
- 22-8-47 New Mexico government education fund.
- 22-8-48 New school development fund; distribution.

### 22-8-1. Short title.

Chapter 22, Article 8 NMSA 1978 may be cited as the "Public School Finance Act".

**History:** 1953 Comp., § 77-6-1, enacted by Laws 1967, ch. 16, § 55; 2003, ch. 153, § 28.

**Cross references.** — For general obligation bonds of school districts, see 22-18-1 NMSA 1978 et seq.

For school revenue bonds, see 22-19-1 NMSA 1978 et seq.

For public school emergency capital outlay, see 22-24-1 NMSA 1978 et seq.

For public school capital improvements, see 22-25-1 NMSA 1978 et seq.

**The 2003 amendment**, effective April 4, 2003, substituted "Chapter 22, Article 8 NMSA 1978" for "Sections 22-8-1 through 22-8-42 NMSA 1978" at the beginning of the section.

## ANNOTATIONS

**No contractual right to free public education.** — The right and privilege to a free public education does not give rise to a contractual relationship for which an individual may sue for breach of contract. *Rubio v. Carlsbad Mun. Sch. Dist.*, 106 N.M. 446, 744 P.2d 919 (Ct. App. 1987).

**Education of nonresidents without taking state allotment unconstitutional donation.** — To the extent that a local school district would undertake the total burden of educating nonresident students without benefit of state allotment as dispensed on the basis of average daily membership, the school district would still be making a donation in aid of those students in violation of N.M. Const., art. IX, § 14. 1978 Op. Att'y Gen. No. 78-14.

### 22-8-2. Definitions.

As used in the Public School Finance Act:

A. "ADM" or "MEM" means membership;

B. "membership" means the total enrollment of qualified students on the current roll of a class or school on a specified day. The current roll is established by the addition of original entries and reentries minus withdrawals. Withdrawals of students, in addition to students formally withdrawn from the public school, include students absent from the public school for as many as ten consecutive school days; provided that withdrawals do not include students in need of early intervention and habitual truants the school district is required to intervene with and keep in an educational setting as provided in Section 22-12-9 NMSA 1978;

C. "basic program ADM" or "basic program MEM" means the MEM of qualified students but excludes the full-time-equivalent MEM in early childhood education and three- and four-year-old students receiving special education services;

D. "cost differential factor" is the numerical expression of the ratio of the cost of a particular segment of the school program to the cost of the basic program in grades four through six;

E. "department" or "division" means the public education department;

F. "early childhood education ADM" or "early childhood education MEM" means the full-time-equivalent MEM of students attending approved early childhood education programs;

G. "full-time-equivalent ADM" or "full-time-equivalent MEM" is that membership calculated by applying to the MEM in an approved public school program the ratio of the number of hours per school day devoted to the program to six hours or the number of hours per school week devoted to the program to thirty hours;

H. "operating budget" means the annual financial plan required to be submitted by a local school board or governing body of a state-chartered charter school;

I. "program cost" is the product of the total number of program units to which a school

district is entitled multiplied by the dollar value per program unit established by the legislature;

J. "program element" is that component of a public school system to which a cost differential factor is applied to determine the number of program units to which a school district is entitled, including but not limited to MEM, full-time-equivalent MEM, teacher, classroom or public school;

K. "program unit" is the product of the program element multiplied by the applicable cost differential factor;

L. "public money" or "public funds" means all money from public or private sources received by a school district or state-chartered charter school or officer or employee of a school district or state-chartered charter school for public use;

M. "qualified student" means a public school student who:

- (1) has not graduated from high school;
- (2) is regularly enrolled in one-half or more of the minimum course requirements approved by the department for public school students; and
- (3) in terms of age:
  - (a) is at least five years of age prior to 12:01 a.m. on September 1 of the school year;
  - (b) is at least three years of age at any time during the school year and is receiving special education services pursuant to rules of the department; or
  - (c) has not reached the student's twenty-second birthday on the first day of the school year and is receiving special education services pursuant to rules of the department; and

N. "state superintendent" means the secretary of public education or the secretary's designee.

History: 1953 Comp., § 77-6-2, enacted by Laws 1967, ch. 16, § 56; 1969, ch. 180, § 3; 1971, ch. 263, § 3; 1972, ch. 17, § 1; 1974, ch. 7, § 1; 1974, ch. 8, § 1; 1977, ch. 83, § 1; 1977, ch. 246, § 62; reenacted by Laws 1978, ch. 128, § 3; 1980, ch. 151, § 46; 1983, ch. 301, § 68; 1985, ch. 93, § 1; 1986, ch. 33, § 13; 1988, ch. 64, § 13; 1995, ch. 69, § 1; 1997, ch. 40, § 2; 2004, ch. 27, § 21; 2005, ch. 260, § 1; 2006, ch. 94, § 2; 2009, ch. 193, § 1.

**Cross references.** — For the secretary of public education, see 9-24-5 NMSA 1978 and N.M. Const., art. XII, § 6.

**The 2009 amendment**, effective June 19, 2009, in Subsection B, in the second sentence, after "withdrawals do not include", deleted "truants" and added "students in need of early intervention"; and in Paragraph (3) of Subsection M, added "in terms of age".

**The 2006 amendment**, effective July 1, 2007, included governing body of a state-chartered charter school in Subsection H; and in Subsection L, changed "local school board" to "school district" and added state-chartered charter school.

**The 2005 amendment**, effective June 17, 2005, provided in Subsection B that withdrawals do not include truants and habitual truants that the school district is required to intervene with and keep in an

educational setting pursuant to Section 22-12-9 NMSA 1978.

**The 2004 amendment**, effective May 19, 2004, changed "state department" to "department".

**The 1997 amendment**, effective July 1, 1997, made a stylistic change in Subsection B.

**The 1995 amendment**, effective June 16, 1995, inserted "or 'MEM'" and deleted "MEM" from the end in Subsection A; rewrote Subsection C; inserted "or 'division'" in Subsection E; inserted "or 'early childhood education MEM'" and substituted "MEM" for "ADM" in Subsection F; inserted "or 'full-time equivalent MEM'", deleted "average daily" preceding "membership" and substituted "MEM" for "ADM" in Subsection G; substituted "MEM" for "ADM" in two places in Subsection J; deleted "provided the provisions of this paragraph shall be effective with the 1987 - 1988 school year" at the end of Paragraph (3) of Subsection M; deleted former Subsection N which defined "special education ADM"; added Paragraphs (4) and (5) in Subsection M; redesignated former Subsection O as Subsection N; and made minor stylistic changes throughout the section.

**The 1988 amendment**, effective May 18, 1988, substituted "'ADM' means membership ('MEM')" for "'ADM' means average daily membership" in Subsection A; in Subsection B, deleted "average daily" preceding "membership" in the first sentence, substituted "qualified students on the current roll of class or school on a specified day" for "students for each school day of the school year used, minus withdrawals of students, divided by the number of school days used", and added the next-to-last sentence; substituted present Subsection E for the provisions of the former subsection which defined "division"; added Subsection O and made related changes in Subsection N.

### **22-8-3. Office of education abolished; functions transferred.**

The office of education in the department of finance and administration is abolished. On the effective date of this act, all powers and duties provided by law for the office of education are transferred to the state department of public education [public education department].

**History:** 1978 Comp., § 22-8-3, enacted by Laws 1988, ch. 64, § 14.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

Laws 2004, ch. 25, § 27, provided that all references to the superintendent of public instruction shall be deemed references to the secretary of public education and all references to the former state board of education or state department of education shall be deemed references to the public education department. See 9-24-15 NMSA 1978.

**Repeals and reenactments.** — Laws 1988, ch. 64, § 14 repealed former 22-8-3 NMSA 1978, relating to creation of the office of education, as amended by Laws 1983, ch. 301, § 69 and enacted the above section, effective May 18, 1988.

**Compiler's notes.** — The phrase "effective date of this act" means May 18, 1988, the effective date of Laws 1988, Chapter 64.

### **22-8-4. Department; duties.**

In addition to other duties provided by law, the department shall:

A. prescribe the forms for and supervise and control the preparation of all budgets of all public schools and school districts; and

B. compile accurate information concerning public school finance and administration.

**History:** 1953 Comp., § 77-6-4, enacted by Laws 1967, ch. 16, § 58; 1969, ch. 180, § 4; 1974, ch. 8, § 2; 1978, ch. 127, § 2; 1979, ch. 305, § 1; 1988, ch. 64, § 15.

**The 1988 amendment,** effective May 18, 1988, substituted "Department" for "Public school finance division" in the catchline; substituted "department" for "division" in the introductory paragraph; deleted Subsection C, regarding advising and consulting with the state superintendent in regard to financial matters, and made a related change.

## ANNOTATIONS

**Discretionary substantive line item allocations.** — Supervision or control does not include grant of power to division or chief (now director) to make discretionary substantive line item allocations in estimated budgets. 1975 Op. Att'y Gen. No. 75-30.

### 22-8-5. Rules; procedures.

A. The department, in consultation with the state auditor, shall establish rules and procedures for a uniform system of accounting and budgeting of funds for all public schools and school districts of the state. The rules, including revisions or amendments, shall become effective only upon approval by the state board [department] and filing with the state records center and publication. A copy shall also be filed with the department of finance and administration.

B. All public schools and school districts shall comply with the rules and procedures prescribed and shall, upon request, submit additional reports concerning finances to the department. In addition, upon request, all public schools and school districts shall file reports with the department containing pertinent details regarding applications for federal money or federal grants-in-aid or regarding federal money or federal grants-in-aid received, including details of programs, matching funds, personnel requirements, salary provisions and program numbers, as indicated in the catalog of federal domestic assistance, of the federal funds applied for and of those received.

C. Upon request by the department of finance and administration, the legislative finance committee or the legislative education study committee, the department shall timely furnish information and data obtained from public schools and school districts pursuant to Subsection B of this section.

**History:** 1953 Comp., § 77-6-5, enacted by Laws 1967, ch. 16, § 59; 1976 (S.S.), ch. 28, § 3; 1988, ch. 64, § 16; 1999, ch. 291, § 1; 2003, ch. 273, § 23.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the

law.

Laws 2004, ch. 25, § 27, provided that all references to the superintendent of public instruction shall be deemed references to the secretary of public education and all references to the former state board of education or state department of education shall be deemed references to the public education department. See 9-24-15 NMSA 1978.

**Cross references.** — For filing with records center, see 14-4-4 NMSA 1978.

For state auditor, see 8-6-1 NMSA 1978.

For audit act, see 12-6-1 NMSA 1978.

For legislative education study committee, see 2-10-1 NMSA 1978.

**The 2003 amendment**, effective July 1, 2003, in Subsection A, inserted "in consultation with the state auditor" near the beginning and deleted "and the legislative finance committee" following "the state board".

**The 1999 amendment**, effective April 8, 1999, substituted references to rules and procedures for a uniform system of accounting and budgeting of funds for references to a manual of accounting and budgeting in the section heading and throughout the section, substituted "state board" for "state board of education" in Subsection A, deleted "but not limited to" after "grants-in-aid received, including" in Subsection B, and substituted "department" for "state department of public education" in Subsection C.

**The 1988 amendment**, effective May 18, 1988, substituted "department" for "division" throughout the section; in Subsection A, inserted "state board of education and the" in the second sentence, substituted "state records center" for "supreme court law librarian", and added the last sentence; and added Subsection C.

### **22-8-5.1. Procurement, travel and gas cards.**

A. The department shall promulgate rules governing the use of procurement, travel and gas cards by school districts and charter schools. At a minimum, the rules shall require local school boards and governing bodies to adopt policies for the use of procurement, travel or gas cards, including placing limits on the amount and types of purchases that may be made on such cards and procedures to monitor, control and report expenditures.

B. As used in this section:

(1) "charter school" means a school organized as a charter school pursuant to the provisions of the Charter Schools Act [Chapter 22, Article 8B NMSA 1978]; and

(2) "governing body" means the governing structure of a charter school as set forth in the school's charter.

History: Laws 2011, ch. 12, § 2.

**Effective dates.** — Laws 2011, ch. 12 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 17, 2011, 90 days after the adjournment of the legislature.

### **22-8-6. Budgets; submission; failure to submit.**

A. Prior to April 15 of each year, each local school board shall submit to the department an operating budget for the school district for the ensuing fiscal year. Upon written approval of the state superintendent [secretary], the date for the submission of the operating budget as required by this section may be extended to a later date fixed by the state superintendent.

B. The operating budget required by this section may include:

- (1) estimates of the cost of insurance policies for periods up to five years if a lower rate may be obtained by purchasing insurance for the longer term; or
- (2) estimates of the cost of contracts for the transportation of students for terms extending up to four years.

C. The operating budget required by this section shall include a proposed breakdown for charter schools in the school district, by individual charter school, of the membership projected for each charter school, the total program units generated at that charter school and approximate anticipated disbursements and expenditures at each charter school.

D. If a local school board fails to submit a budget pursuant to this section, the department shall prepare the operating budget for the school district for the ensuing fiscal year. A local school board shall be considered as failing to submit a budget pursuant to this section if the budget submitted exceeds the total projected resources of the school district or if the budget submitted does not comply with the law or with rules and procedures of the department.

**History:** 1953 Comp., § 77-6-6, enacted by Laws 1967, ch. 16, § 60; 1988, ch. 64, § 17; 1993, ch. 224, § 2; 1993, ch. 227, § 9; 1999, ch. 281, § 21; 1999, ch. 291, § 2.

**Cross references.** — For transfer of powers and duties of the former state superintendent, see 9-24-15 NMSA 1978.

**1999 amendments.** — Laws 1999, ch. 281, § 21, effective June 18, 1999, inserting "and any charter schools in the district" in the first sentence of Subsection A, and rewriting Subsection C, was approved on April 8, 1999. Laws 1999, ch. 291, § 2, effective April 8, 1999, substituted "operating budget" for "estimated budget" throughout the section, deleted "local" before "school district" in Subsection C, and substituted "with rules and procedures" for "the manual of accounting and budgeting" at the end of Subsection D. The section is set out as amended by Laws 1999, ch 291, § 2. See 12-1-8 NMSA 1978.

**1993 amendments.** — Laws 1993, ch. 227, § 9, effective June 18, 1993, added a new Subsection C and redesignated former Subsection C as Subsection D

**The 1988 amendment,** effective May 18, 1988, substituted "department" for "division" and "state superintendent" for "chief" throughout the section.

## ANNOTATIONS

**Legislative intent.** — The legislature obviously intended that a school board may purchase insurance policies not to exceed five years and, if prepayment of the entire premium in the initial policy year is necessary in order to obtain the insurance, then the school board may legally do so. 1975 Op. Att'y Gen.

No. 75-03.

### **22-8-6.1. Charter school budgets.**

A. Each state-chartered charter school shall submit to the charter schools division of the department a school-based budget. For the first year of operation, the budget of every state-chartered charter school shall be based on the projected number of program units generated by that charter school and its students, using the at-risk index and the instructional staff training and experience index of the school district in which it is geographically located. For second and subsequent fiscal years of operation, the budgets of state-chartered charter schools shall be based on the number of program units generated using the average of the MEM on the second and third reporting dates of the prior year and its own instructional staff training and experience index and the at-risk index of the school district in which the state-chartered charter school is geographically located. The budget shall be submitted to the division for approval or amendment pursuant to the Public School Finance Act and the Charter Schools Act [Chapter 22, Article 8B NMSA 1978].

B. Each locally chartered charter school shall submit to the local school board a school-based budget. For the first year of operation, the budget of every locally chartered charter school shall be based on the projected number of program units generated by the charter school and its students, using the at-risk index and the instructional staff training and experience index of the school district in which it is geographically located. For second and subsequent fiscal years of operation, the budgets of locally chartered charter schools shall be based on the number of program units generated using the average of the MEM on the second and third reporting dates of the prior year and its own instructional staff training and experience index and the at-risk index of the school district in which the locally chartered charter school is geographically located. The budget shall be submitted to the local school board for approval or amendment. The approval or amendment authority of the local school board relative to the charter school budget is limited to ensuring that sound fiscal practices are followed in the development of the budget and that the charter school budget is within the allotted resources. The local school board shall have no veto authority over individual line items within the charter school's proposed budget, but shall approve or disapprove the budget in its entirety. Upon final approval of the local budget by the local school board, the individual charter school budget shall be included separately in the budget submission to the department required pursuant to the Public School Finance Act and the Charter Schools Act.

C. For the first year of operation after a locally chartered charter school converts to a state-chartered charter school or a state-chartered charter school converts to a locally chartered charter school, the charter school's budget shall be based on the number of program units generated using the average of the MEM on the second and third reporting dates of the prior year and the instructional staff training and experience index and the at-risk index of the school district in which it is geographically located. For second and subsequent fiscal years of

operation, the charter school shall follow the provisions of Subsection A or B of this section, as applicable.

D. Notwithstanding the provisions of Subsections A through C of this section, each charter school that was in existence in fiscal year 2009 shall be held harmless in the calculation of its instructional staff training and experience index for two fiscal years. For fiscal years 2010 and 2011, the department shall use the greater of the charter school's 2008-2009 funded instructional staff training and experience index or the charter school's own instructional staff training and experience index. Beginning in fiscal year 2012, each charter school shall use its own instructional staff training and experience index.

History: Laws 1993, ch. 227, § 8; 1999, ch. 281, § 22; 2006, ch. 94, § 3; 2009, ch. 213, § 1; 2010, ch. 116, § 2.

**The 2010 amendment**, effective May 19, 2010, in Subsection A, in the third sentence, after "using the average of the", deleted "eightieth and one hundred twentieth day" and after "MEM", added "on the second and third reporting dates"; in Subsection B, in the third sentence, after "using the average of the", deleted "eightieth and one hundred twentieth day" and after "MEM", added "on the second and third reporting dates"; and in Subsection C, in the first sentence, after "using the average of the", deleted "eightieth and one hundred twentieth day" and after "MEM", added "on the second and third reporting dates".

**Temporary provisions.** — Laws 2010, ch. 116, § 9 provided that references in the Public School Code pertaining to the fortieth-day or forty-day report of public school membership or enrollment shall be deemed to be references to the first reporting date, which is the second Wednesday in October; references pertaining to the eightieth-day or eighty-day report of public school membership or enrollment shall be deemed to be references to the second reporting date, which is the second Wednesday in December; and references pertaining to the one-hundred twentieth-day or one-hundred twenty-day report of public school membership or enrollment shall be deemed to be references to the third reporting date, which is the second Wednesday in February.

As the public schools transition from former reporting dates to new reporting dates, the public education department may use any combination of former and new reporting dates as necessary to develop membership and cost projections and budgets for the 2010-2011 school year.

**The 2009 amendment**, effective June 19, 2009, in Subsection A, in the second sentence, after "For", deleted "fiscal year 2008, and for" and after "first year of operation", deleted "in any fiscal year thereafter"; in Subsection B, in the second sentence, after "For", deleted "fiscal year 2008, and for" and after "first year of operation", deleted "in any fiscal year thereafter" and after "program units generated", deleted "using the average of the eighteenth and one hundred twentieth day MEM of the prior year" and added "by the charter school and its students"; in the second sentence, after "shall be based on the" added "number of program units generated using the average of the eighteenth and one hundred twentieth day MEM, of the" and after "prior year" deleted "program units generated by that locally chartered charter school and its students"; and added Subsections C and D.

**The 2006 amendment**, effective July 1, 2007, in Subsection A, changed "charter school" to "state-chartered charter school"; changed "local school board" to "charter schools division of the department"; required budgets for every state-chartered charter school for fiscal year 2008 and the first year of operation in any fiscal year thereafter; provided for budgets for second and subsequent fiscal years and in Subsection B required locally chartered charter schools to submit budgets to local school boards and provided criteria for budgets for locally chartered charter school for fiscal year 2008 and for

subsequent fiscal years.

**The 1999 amendment**, effective June 18, 1999, rewrote the section to the extent that a detailed comparison is impracticable.

### **22-8-7. Budgets; form.**

All budgets submitted to the department by a school district or state-chartered charter school shall be in a form specified by the department.

History: 1953 Comp., § 77-6-7, enacted by Laws 1967, ch. 16, § 61; 1969, ch. 180, § 5; 1999, ch. 291, § 3; 2006, ch. 94, § 4.

**The 2006 amendment**, effective July 1, 2007, added state-chartered charter schools.

**The 1999 amendment**, effective April 8, 1999, substituted "department" for "division" and for "manual of accounting and budgeting of the division".

#### **22-8-7.1. Certain school district budgets.**

A. The local school board of a school district with a total MEM of greater than thirty thousand shall develop a school-based budgeting plan for all schools in the district for presentation to the legislative education study committee by October 15, 1993. The plan shall describe the means by which teachers, parents and administrators will participate in the development of school-based budgets.

B. In those school districts with a total MEM of greater than thirty thousand each individual school may voluntarily submit to the local school board a school-based budget based upon the projected total MEM at that school and the projected number of program units generated by students at that school. If an individual school submits such a budget, the local school board may include it in the budget submission to the department required pursuant to the Public School Finance Act.

**History:** Laws 1993, ch. 224, § 1.

**Cross references.** — For the public education department, see 9-24-4 NMSA 1978.

#### **22-8-8. Budgets; minimum student membership.**

Without prior approval of the state superintendent [secretary], no local school board shall maintain or provide a budget allowance for a public school having an average daily membership of less than eight.

**History:** 1953 Comp., § 77-6-8, enacted by Laws 1967, ch. 16, § 62; 1988, ch. 64, § 18.

**Cross references.** — For transfer of powers and duties of the former state superintendent, see

9-24-15 NMSA 1978.

The 1988 amendment, effective May 18, 1988, substituted "state superintendent" for "chief".

### 22-8-9. Budgets; minimum requirements.

A. A budget for a school district shall not be approved by the department that does not provide for:

- (1) a school year and school day as provided in Section 22-2-8.1 NMSA 1978; and
- (2) a pupil-teacher ratio or class or teaching load as provided in Section 22-10A-20 NMSA 1978.

B. The department shall, by rule, establish the requirements for an instructional day, the standards for an instructional hour and the standards for a full-time teacher and for the equivalent thereof.

History: 1953 Comp., § 77-6-9, enacted by Laws 1967, ch. 16, § 63; 1969, ch. 180, § 6; 1979, ch. 32, § 1; 1982, ch. 40, § 1; 1986, ch. 33, § 14; 1988, ch. 64, § 19; 1993, ch. 223, § 1; 1993, ch. 226, § 19; 1994, ch. 68, § 1; 1996, ch. 62, § 1; 1997, ch. 136, § 1; 2001, ch. 285, § 1; 2003, ch. 153, § 29; 2009, ch. 276, § 2.

**Cross references.** — For the public education department, see 9-24-4 NMSA 1978.

The 2009 amendment, effective June 19, 2009, in Paragraph (1) of Subsection A, after "a school year", deleted "consisting of at least one hundred eighty full instructional days or the equivalent thereof, exclusive of any release time for in-service training"; and deleted "(2) a variable school year consisting of a minimum number of instructional hours established by the state board" and added the remainder of the sentence.

**Applicability.** — Laws 2009, ch. 276, § 3 provided that the provisions of Laws 2009, ch. 276, §§ 1 and 2 apply to the 2010-2011 and subsequent school years.

The 2003 amendment, effective April 4, 2003, deleted "of education" following "department" near the middle of Subsection A; substituted "22-10A-20" for "22-2-8.2" following "Section" near the end of Subsection A(3); in Subsection B substituted "rule" for "regulation" following "shall, by" near the beginning, substituted "an instructional" for "a teaching" following "requirements for" near the middle and substituted "teacher" for "certified school instructor" following "a full-time" near the end; and deleted Subsection C.

The 2001 amendment, effective June 15, 2001, inserted "of education" following "department" in Subsection A; substituted "school instructor" for "classroom instructor" in Subsection B; and deleted Subsection D, which read "The provisions of Subsection C and Paragraph (2) of Subsection A of this section shall apply to school districts with a MEM of one thousand or fewer."

The 1997 amendment, effective June 20, 1997, deleted former Subsection A(4), which read: "effective July 1, 1997, a full-time, department-certified nurse for each fifty-five teachers employed by a school district or the equivalent part-time, department-certified nurse for less than fifty-five teachers" and in Subsection D, deleted "be construed to" following "shall" and deleted "only" following "apply".

The 1996 amendment, effective May 15, 1996, added Paragraph A(4) and made a stylistic change in

#### Subsection D.

**The 1993 amendment**, effective July 1, 1993, deleted "effective with the 1987-88 school year" following "in-service training" in Paragraph (1) of Subsection A and substituted "a MEM" for "an ADM" in Subsection D.

**The 1988 amendment**, effective May 18, 1988, substituted "department" for "division" near the beginning of Subsection A and "an ADM of 1,000 or fewer" for "an ADM of 500 or fewer" in Subsection D.

#### **22-8-10. Budgets; fixing the operating budget.**

A. Prior to June 20 of each year, each local school board shall, at a public hearing of which notice has been published by the local school board, fix the operating budget for the school district for the ensuing fiscal year. At the discretion of the state superintendent [secretary] or the local school board, the department may participate in the public hearing.

B. Prior to the public hearing held to fix the operating budget for the school district, the local school board shall give notice to parents explaining the budget process and inviting parental involvement and input in that process prior to the date for the public hearing.

**History:** 1953 Comp., § 77-6-11, enacted by Laws 1967, ch. 16, § 65; 1988, ch. 64, § 20; 1989, ch. 225, § 1; 1993, ch. 41, § 1; 1999, ch. 291, § 4.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

Laws 2004, ch. 25, § 27, provided that all references to the superintendent of public instruction shall be deemed references to the secretary of public education and all references to the former state board of education or state department of education shall be deemed references to the public education department. See 9-24-15 NMSA 1978.

**The 1999 amendment**, effective April 8, 1999, substituted "operating budget" for "estimated budget" throughout the section.

**The 1993 amendment**, effective March 17, 1993, designated the formerly undesignated provisions as Subsection A and added Subsection B.

**The 1989 amendment**, effective June 16, 1989, deleted "and the department" preceding "shall" in the first sentence, and added the second sentence.

**The 1988 amendment**, effective May 18, 1988, substituted "department" for "chief".

#### **22-8-11. Budgets; approval of operating budget.**

A. The department shall:

(1) on or before July 1 of each year, approve and certify to each local school board and governing body of a state-chartered charter school an operating budget for use by the school district or state-chartered charter school;

(2) make corrections, revisions and amendments to the operating budgets fixed by the local school boards or governing bodies of state-chartered charter schools and the secretary to conform the budgets to the requirements of law and to the department's rules and procedures; and

(3) ensure that a local school board or governing body of a charter school is prioritizing resources of a public school rated D or F toward proven programs and methods that are linked to improved student achievement until the public school earns a grade of C or better for two consecutive years.

B. No school district or state-chartered charter school or officer or employee of a school district or state-chartered charter school shall make any expenditure or incur any obligation for the expenditure of public funds unless that expenditure or obligation is made in accordance with an operating budget approved by the department. This prohibition does not prohibit the transfer of funds pursuant to the department's rules and procedures.

C. The department shall not approve and certify an operating budget of any school district or state-chartered charter school that fails to demonstrate that parental involvement in the budget process was solicited.

History: 1953 Comp., § 77-6-12, enacted by Laws 1967, ch. 16, § 66; 1978, ch. 128, § 4; 1988, ch. 64, § 21; 1993, ch. 41, § 2; 1999, ch. 291, § 5; 2006, ch. 94, § 5; 2011, ch.10 , § 5.

**Cross references.** — For transfer of powers and duties of former state superintendent, see 9-24-15 NMSA 1978.

**The 2011 amendment**, effective June 17, 2011, required the department to ensure that public schools that are rated D or F prioritize resources to improve student achievement.

**Severability.** — Laws 2011, ch. 10, § 7 provided that if any part of application of this act is held invalid, the remainder or its application to other situations or persons shall not be affected.

**The 2006 amendment**, effective July 1, 2007, Paragraphs (1) and (2) of Subsection A, added the governing body of a state-chartered charter school; in Paragraphs (1) and (2) of Subsection A and in Subsection B, changed "school board" to "school district"; and in Paragraphs (1) and (2) of Subsection A and in Subsections B and C, added state-chartered charter school.

**The 1999 amendment**, effective April 8, 1999, substituted "approval of operating budget" for "temporary; final" in the section heading; substituted "an operating budget" for "a temporary operating budget" in Subsections A(1) and C; deleted "pending approval by the department of a final budget" at the end of Subsection A(1); in Subsection A(2) substituted "operating budgets" for "estimated budgets" and "to the department's rules and procedures" for "to the manual of accounting and budgeting; and"; deleted Subsection A(3) which required that final budgets be approved and certified to local school boards and boards of county commissioners before the first Monday of September of each year; and in Subsection B, deleted "contractual" before "obligation is made" in the first sentence and substituted "pursuant to the department's rules and procedures" for "between line items within series of a budget" in the second sentence.

**The 1993 amendment**, effective March 17, 1993, added Subsection C.

**The 1988 amendment**, effective May 18, 1988, substituted "department" for "division" and "state

superintendent" for "director" throughout the section and made minor stylistic changes.

### **22-8-12. Operating budgets; amendments.**

Operating budgets shall not be altered or amended after approval and certification by the department, except for the following purposes and according to the following procedure:

A. upon written request of a local school board or governing body of a state-chartered charter school, the secretary may authorize transfer within the budget, or provide for items not included, when the total amount of the budget will not be increased thereby;

B. upon written request of a local school board or governing body of a state-chartered charter school, the secretary, in conformance with the rules of the department, may authorize an increase in any budget if the increase is necessary because of the receipt of revenue that was not anticipated at the time the budget was fixed and if the increase is directly related to a special project or program for which the additional revenue was received. The secretary shall make a written report to the legislative finance committee of any such budget increase;

C. upon written request of a local school board or governing body of a state-chartered charter school, the secretary may authorize an increase in a budget of not more than one thousand dollars (\$1,000); or

D. upon written request of a local school board or governing body of a state-chartered charter school, the secretary, after notice and a public hearing, may authorize an increase in a school budget in an amount exceeding one thousand dollars (\$1,000). The notice of the hearing shall designate the school district that proposes to alter or amend its budget, together with the time, place and date of the hearing. The notice of the hearing shall be published at least once a week for two consecutive weeks in a newspaper of general circulation in the county in which the school district is situated. The last publication of the notice shall be at least three days prior to the date set for the hearing. The charter schools division shall establish how a state-chartered charter school notifies the parents of its students of proposed increases in a charter school budget. History: 1953 Comp., § 77-6-13, enacted by Laws 1967, ch. 16, § 67; 1969, ch. 180, § 10; 1977, ch. 247, § 203; 1988, ch. 64, § 22; 1999, ch. 291, § 6; 2006, ch. 94, § 6.

**Cross references.** — For transfer of powers and duties of former state superintendent, see 9-24-15 NMSA 1978.

**The 2006 amendment**, effective July 1, 2007, added governing body of a state-chartered charter school in Subsections A through D and provided in Subsection D that the charter schools division shall establish how a state-chartered charter school notifies parents of its students of proposed increases in a budget.

**The 1999 amendment**, effective April 8, 1999, substituted the present section heading for "Final budgets; alterations or amendments", substituted "Operating budgets" for "Final budgets" at the beginning of the first paragraph, and substituted "rules of the department" for "regulations of the department" in Subsection B.

The 1988 amendment, effective May 18, 1988, substituted "department" for "division" in the introductory paragraph; substituted "state superintendent" for "chief" throughout the section; and deleted "of finance and administration and with the approval of its secretary" following "regulations of the department" in the first sentence in Subsection B.

### **22-8-12.1. Membership projections and budget requests.**

A. Each local school board or governing body of a state-chartered charter school shall submit annually, on or before October 15, to the department:

- (1) an estimate for the succeeding fiscal year of:
  - (a) the membership of qualified students to be enrolled in the basic program;
  - (b) the full-time-equivalent membership of students to be enrolled in approved early childhood education programs; and
  - (c) the membership of students to be enrolled in approved special education programs;
- (2) all other information necessary to calculate program costs; and
- (3) any other information related to the financial needs of the school district or state-chartered charter school as may be requested by the department.

B. All information requested pursuant to Subsection A of this section shall be submitted on forms prescribed and furnished by the department and shall comply with the department's rules and procedures.

C. The department shall:

- (1) review the financial needs of each school district or state-chartered charter school for the succeeding fiscal year; and
- (2) submit annually, on or before November 30, to the secretary of finance and administration the recommendations of the department for:
  - (a) amendments to the public school finance formula;
  - (b) appropriations for the succeeding fiscal year to the public school fund for inclusion in the executive budget document; and
  - (c) appropriations for the succeeding fiscal year for pupil transportation and instructional materials.

History: 1953 Comp., § 77-6-13.1, enacted by Laws 1978, ch. 128, § 5; 1980, ch. 151, § 48; 1988, ch. 64, § 23; 1993, ch. 226, § 20; 1999, ch. 291, § 7; 2006, ch. 94, § 7.

**Cross references.** — For transfer of powers and duties of former state board, see 9-24-15 NMSA 1978.

The 2006 amendment, effective July 1, 2007, added governing body of a state-chartered charter

school in Subsection A and added state-chartered charter school in Paragraph (3) of Subsection A and Paragraph (1) of Subsection C.

**The 1999 amendment**, effective April 8, 1999, added "Membership projections and" to the beginning of the section heading, and substituted "department's rules and procedures" for "manual of accounting and budgeting published by the department" at the end of Subsection B.

**The 1993 amendment**, effective July 1, 1993, deleted "average daily" preceding "membership" in subparagraphs (a) to (c) of Paragraph (1) of Subsection A; deleted former Subsection B, pertaining to the budget request of the state board for pupil transportation and textbooks; redesignated former Subsections C and D as Subsections B and C; added Subparagraph (c) of Paragraph (2) of Subsection C; and made a minor stylistic change.

**The 1988 amendment**, effective May 18, 1988, substituted "department" for "division" throughout the section; substituted "department" for "director of the public school finance division" in Subsection D; and in Subsection D(2), substituted "November 30" for "November 15" and "state board" for "public school finance division".

## ANNOTATIONS

**Effect of actual costs exceeding program costs.** — A charter school has no right to additional funding if capital expenditures or any other expenditure becomes so great that its actual costs far exceed its "program costs". *Taos Mun. Schs. Charter Sch. v. Davis*, 2004-NMCA-129, 136 N.M. 543, 102 P.3d 102, cert. denied, 2004-NMCERT-010, 136 N.M. 542, 101 P.3d 808.

### 22-8-12.2. Repealed.

**Repeals.** — Laws 1999, ch. 291, § 8 repealed 22-8-12.2 NMSA 1978, as enacted by Laws 1978, ch. 149, § 1, relating to budgets, earnings from investments and operational funds for local school boards, effective April 8, 1999. For provisions of former section, see the 1998 NMSA 1978 on *NMONESOURCE.COM*.

### 22-8-12.3. Local school board finance subcommittee; audit committee; membership; duties.

A. As used in this section, "local school board" includes the governing authority of a charter school.

B. Each local school board shall appoint at least two members of the board as a finance subcommittee to assist the board in carrying out its budget and finance duties.

C. The finance subcommittee shall:

- (1) make recommendations to the local school board in the following areas:
  - (a) financial planning, including reviews of the school district's revenue and expenditure projections;
  - (b) review of financial statements and periodic monitoring of revenues and expenses;
  - (c) annual budget preparation and oversight; and

(d) procurement; and

(2) serve as an external monitoring committee on budget and other financial matters.

D. Except as otherwise provided in this section, each local school board shall appoint an audit committee that consists of two board members, one volunteer member who is a parent of a student attending that school district and one volunteer member who has experience in accounting or financial matters. The superintendent and the school district business manager shall serve as ex-officio members of the committee. A local school board with more than five members may appoint more than two board members to its audit committee. The audit committee shall:

- (1) evaluate the request for proposal for annual financial audit services;
- (2) recommend the selection of the financial auditor;
- (3) attend the entrance and exit conferences for annual and special audits;
- (4) meet with external financial auditors at least monthly after audit field work begins until the conclusion of the audit;
- (5) be accessible to the external financial auditors as requested to facilitate communication with the board and the superintendent;
- (6) track and report progress on the status of the most recent audit findings and advise the local school board on policy changes needed to address audit findings;
- (7) provide other advice and assistance as requested by the local school board; and
- (8) be subject to the same requirements regarding the confidentiality of audit information as those imposed upon the local school board by the Audit Act [12-6-1 through 12-6-14 NMSA 1978] and rules of the state auditor.

History: Laws 2010, ch. 115, § 1.

**Effective dates.** — Laws 2010, ch. 115 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective May 19, 2010, 90 days after the adjournment of the legislature.

### 22-8-13. Reports.

A. Each public school shall keep accurate records concerning membership in the public school.

B. The dates for which MEM is reported are as follows:

- (1) the first reporting date, the second Wednesday in October;
- (2) the second reporting date, December 1 or the first working day in December; and
- (3) the third reporting date, the second Wednesday in February.

C. The superintendent of each school district or head administrator of a state-chartered

charter school shall maintain the following reports for each reporting period:

- (1) the basic program MEM by grade in each public school;
- (2) the early childhood education MEM;
- (3) the special education MEM in each public school in class C and class D programs as defined in Section 22-8-21 NMSA 1978;
- (4) the number of class A and class B programs as defined in Section 22-8-21 NMSA 1978; and
- (5) the full-time-equivalent MEM for bilingual multicultural education programs.

D. The superintendent of each school district and the head administrator of each state-chartered charter school shall furnish all reports required by law or the department to the department within ten working days of the close of each reporting period. Failure of the department to approve timely submissions shall not cause a school district or charter school to be found noncompliant with the requirements of this section. For purposes of this section, "working day" means every calendar day excluding Saturdays, Sundays and legal holidays.

E. All information required pursuant to this section shall be on forms prescribed and furnished by the department. A copy of any report made pursuant to this section shall be kept as a permanent record of the school district or charter school and shall be subject to inspection and audit at any reasonable time.

F. The department may withhold up to one hundred percent of allotments of funds to any school district or state-chartered charter school where the superintendent or head administrator has failed to comply with the requirements of this section. Withholding may continue until the superintendent or head administrator complies with and agrees to continue complying with requirements of this section.

G. The provisions of this section may be modified or suspended by the department for any school district or school or state-chartered charter school operating under the Variable School Calendar Act [22-22-1 through 22-22-26 NMSA 1978]. The department shall require MEM reports consistent with the calendar of operations of such school district or school or state-chartered charter school and shall calculate an equivalent MEM for use in projecting school district or charter school revenue.

History: Laws 1967, ch. 16, § 68; 1953 Comp., § 77-6-14; Laws 1969, ch. 180, § 11; 1971, ch. 263, § 4; 1972, ch. 16, § 7; reenacted by Laws 1974, ch. 8, § 3; 1975, ch. 90, § 1; 1976 (S.S.), ch. 32, § 1; 1978, ch. 128, § 6; 1988, ch. 64, § 24; 1990, ch. 94, § 2; 2006, ch. 94, § 8; 2010, ch. 116, § 3; 2011, ch. 70, § 1.

**Cross references.** — For transfer of powers and duties of former state superintendent and former state board, see 9-24-15 NMSA 1978.

**The 2011 amendment**, effective June 17, 2011, designated December 1 or the first working day in December as the second reporting date and defined "working day".

**The 2010 amendment**, effective May 19, 2010, in Subsection A, after "Each public school", deleted "in a school district and each state-chartered charter school"; added Subsection B; in Subsection C, in the introductory sentence, after "reports for each", deleted "twenty-day"; in Subsection D, after "school shall furnish", added "all reports required by law or the department"; after "to the department", deleted "reports of the information required in Paragraph (1) through (5) of Subsection A of this section for the first forty days of the school year. The forty-day report and all other reports required by law or by the department shall be furnished within five", and added "within ten"; after "days of the close of", deleted "the" and added "each"; and added the last sentence; in Subsection F, in the first sentence, after "The department", deleted "shall" and added "may"; after "may withhold", added "up to one hundred percent of"; and after "has failed to comply", added the remainder of the sentence; and at the beginning of the second sentence, added "Withholding may continue" and in Subsection G, in the second sentence, after "projecting school district" added "or charter school".

**Temporary provisions.** — Laws 2010, ch. 116, § 9 provided that references in the Public School Code pertaining to the fortieth-day or forty-day report of public school membership or enrollment shall be deemed to be references to the first reporting date, which is the second Wednesday in October; references pertaining to the eightieth-day or eighty-day report of public school membership or enrollment shall be deemed to be references to the second reporting date, which is the second Wednesday in December; and references pertaining to the one-hundred twentieth-day or one-hundred twenty-day report of public school membership or enrollment shall be deemed to be references to the third reporting date, which is the second Wednesday in February.

As the public schools transition from former reporting dates to new reporting dates, the public education department may use any combination of former and new reporting dates as necessary to develop membership and cost projections and budgets for the 2010-2011 school year.

**The 2006 amendment**, effective July 1, 2007, added state-chartered charter school and the head administrator of a state-chartered charter school in Subsection A; added the head administrator of a state-chartered charter school in Subsection B; added state-chartered charter school and the head administrator in Subsection D; and added state-chartered charter school in Subsection E.

**The 1990 amendment**, effective May 16, 1990, substituted "MEM" for "ADM" throughout the section and, in Subsection B, deleted "the first eighty days of the school year and for the entire school year" at the end of the first sentence, substituted "The forty-day report and all other reports required by law or by the state board" for "The reports for the first forty days and the first eighty days" at the beginning of the second sentence and deleted a third sentence which read "The report for the entire school year shall be furnished not later than fifteen days following the end of each school year".

**The 1988 amendment**, effective May 18, 1988, substituted "department" for "division" in Subsections B, D, and E; substituted "22-8-21 NMSA 1978" for "77-6-18.4 NMSA 1953" in Subsection A(3); added "as defined in Section 22-8-21 NMSA 1978" in Subsection A(4); deleted the last sentence of Subsection B regarding forty-day and eighty-day reports; and substituted "department" for "director" in Subsections D and E.

## ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — Validity of state or local government regulation requiring private school to report attendance and similar information to government - post-Yoder cases, 8 A.L.R.5th 875.

**22-8-13.1. School district and charter school audits; sanctions for not submitting timely audit reports.**

A. Each school district and charter school shall have an annual audit as required by the Audit Act [12-6-1 through 12-6-14 NMSA 1978] and rules of the state auditor that shall be completed and submitted to the state auditor by the date specified in rules of the state auditor. At the completion of the annual or any special audit, the school district or charter school shall submit a copy of the audit report to the department.

B. School districts and charter schools shall comply with due dates for annual audits specified by rule of the state auditor. Failure to submit a timely audit report shall subject a school district or charter school to progressive sanctions. A school district or charter school that does not submit an annual audit report:

(1) within ninety days from the due date, shall be required to submit monthly financial reports to the department until the department is satisfied that the school district or charter school is in compliance with all financial and audit requirements;

(2) after ninety days but within one hundred eighty days from the due date, may be withheld temporarily in an amount up to five percent of its current-year state equalization guarantee distribution;

(3) after one hundred eighty days but within two hundred seventy days, may be withheld temporarily in an amount up to seven percent of its current-year state equalization guarantee distribution and may be required to submit a corrective action plan to the secretary; and

(4) after two hundred seventy days, may be withheld temporarily in an amount up to seven percent of its current-year state equalization guarantee distribution and may be subject to the secretary's suspension of the local school board or governing body acting as a board of finance.

History: Laws 2009, ch. 273, § 2.

**Effective dates.** — Laws 2009, ch. 273, § 3 made Laws 2009, ch. 273, § 2 effective July 1, 2010.

**22-8-13.2. Financial reporting.**

A. Each local superintendent or person in charge of the fiscal management of a charter school shall provide quarterly reports on the financial position of the school district or charter school, as applicable, to the local school board of the school district or the governing body of the charter school for use in reviewing the financial status of the school district or charter school. The department shall develop the forms to be used for the financial reporting required under this section. The forms shall provide for at least the following:

(1) a report on the budget status of the local school district or charter school,

including the approved operating budget for revenues and expenses compared with year-to-date actual revenue and expenses;

- (2) a statement of any budget adjustment requests;
- (3) cash reports, including revenue, expenses, temporary loans and cash balances for operational, state and federal grants, capital outlay and debt service funds;
- (4) voucher reports, including a list of issued warrants or checks;
- (5) reports listing procurement, travel or gas card expenses; and
- (6) investment reports.

B. School districts and charter schools shall post the reports required under Subsection A of this section on the school district's or charter school's web site.

C. As used in this section:

(1) "charter school" means a school organized as a charter school pursuant to the provisions of the Charter Schools Act [Chapter 22, Article 8B NMSA 1978]; and

(2) "governing body" means the governing structure of a charter school as set forth in the school's charter.

History: Laws 2011, ch. 12, § 1.

**Effective dates.** — Laws 2011, ch. 12 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 17, 2011, 90 days after the adjournment of the legislature.

#### **22-8-14. Public school fund.**

A. The "public school fund" is created.

B. The public school fund shall be distributed to school districts and state-chartered charter schools in the following parts:

- (1) state equalization guarantee distribution;
- (2) transportation distribution; and
- (3) supplemental distributions:
  - (a) out-of-state tuition to school districts;
  - (b) emergency; and
  - (c) program enrichment.

C. The distributions of the public school fund shall be made by the department within limits established by law. The balance remaining in the public school fund at the end of each fiscal year shall revert to the general fund, unless otherwise provided by law.

History: 1953 Comp., § 77-6-15, enacted by Laws 1967, ch. 16, § 69; 1969, ch. 180, § 12; 1971, ch. 263, § 5; 1972, ch. 87, § 1; 1973, ch. 351, § 1; 1974, ch. 8, § 4; 1975, ch. 342, § 1; 1988, ch.

64, § 25; 2006, ch. 94, § 9.

**Cross references.** — For state equalization guarantee distributions, see 22-8-25 NMSA 1978.

For transportation distributions, see 22-8-26 to 22-8-29 NMSA 1978.

For supplemental distributions, see 22-8-30 NMSA 1978.

For transfer of unencumbered balances in current school fund to public school fund, see 22-8-32 NMSA 1978.

For transfer of federal mineral leasing funds to public school fund, see 22-8-34 NMSA 1978.

**The 2006 amendment**, effective July 1, 2007, changed "this fund" to "the public school fund" and added state-chartered charter schools in Subsection B and added "to school districts" in Subparagraph (a) of Paragraph (3) of Subsection B.

**The 1988 amendment**, effective May 18, 1988, substituted "department" for "chief" in the first sentence in Subsection C.

## ANNOTATIONS

**Proper entity to receive funding.** — Local school district within which Los Lunas hospital and training school is located is appropriate entity to receive funding pursuant to the Public School Finance Act for special education of exceptional children. 1977 Op. Att'y Gen. No. 77-04.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 68 Am. Jur. 2d Schools § 99 et seq.

79 C.J.S. Schools and School Districts §§ 410 to 413.

### 22-8-15. Allocation limitation.

A. The department shall determine the allocations to each school district and charter school from each of the distributions of the public school fund, subject to the limits established by law.

B. The local school board in each school district with locally chartered charter schools shall allocate the appropriate distributions of the public school fund to individual locally chartered charter schools pursuant to each locally chartered charter school's school-based budget approved by the local school board and the department. The appropriate distribution of the public school fund shall flow to the locally chartered charter school within five days after the school district's receipt of the state equalization guarantee for that month.

History: 1953 Comp., § 77-6-16, enacted by Laws 1967, ch. 16, § 70; 1974, ch. 8, § 5; 1988, ch. 64, § 26; 1993, ch. 224, § 3; 1993, ch. 227, § 10; 1999, ch. 281, § 23; 2006, ch. 94, § 10.

**Cross references.** — For public school fund, see 22-8-14 NMSA 1978.

**The 2006 amendment**, effective July 1, 2007, changed "charter schools" to "locally chartered charter schools".

**The 1999 amendment**, effective June 18, 1999, in Subsection B, deleted "local" preceding "school district" and deleted the last sentence, which read "The local school board may retain an amount not to exceed the school district's administrative cost relevant to that charter school", and rewrote Subsection C, which read "The local school board in each local school district with authorized charter schools shall establish an individual charter school account to receive public school fund disbursement for each charter school."

**The 1993 amendment**, effective June 18, 1993, designated the formerly undesignated provision as Subsection A and added Subsections B and C.

**The 1988 amendment**, effective May 18, 1988, substituted "department" for "chief".

### **22-8-16. Payment to school districts.**

The department shall make payments of each distribution of the public school fund by warrant of the department of finance and administration drawn against the public school fund upon vouchers issued by the department. When payments are made to county treasurers for school districts within the county, the county treasurer shall hold and allocate these funds solely for the use and benefit of the specific school district and purpose for which the allocation was made.

**History:** 1953 Comp., § 77-6-17, enacted by Laws 1967, ch. 16, § 71; 1974, ch. 8, § 6; 1988, ch. 64, § 27.

**The 1988 amendment**, effective May 18, 1988, substituted "department" for "chief" twice in the first sentence.

### **22-8-17. Program cost determination; required information.**

A. The program cost for each school district and charter school shall be determined by the department in accordance with the provisions of the Public School Finance Act.

B. The department is authorized to require from each school district and charter school the information necessary to make an accurate determination of the district's or charter school's program cost.

**History:** 1953 Comp., § 77-6-18, enacted by Laws 1969, ch. 180, § 13; reenacted by Laws 1974, ch. 8, § 7; 1988, ch. 64, § 28; 2006, ch. 94, § 11.

**The 2006 amendment**, effective July 1, 2007, added "charter school" in Subsections A and B.

**The 1988 amendment**, effective May 18, 1988, substituted "department" for "chief" once in each subsection.

## **ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — Determination of school attendance, enrollment, or pupil population for purpose of apportionment of funds, 80 A.L.R.2d 953.

Property taxes: validity of basing public school financing system on local property taxes, 41 A.L.R.3d 1220.

**22-8-18. Program cost calculation; local responsibility.**

A. The total program units for the purpose of computing the program cost shall be calculated by multiplying the sum of the program units itemized as Paragraphs (1) through (6) in this subsection by the instructional staff training and experience index and adding the program units itemized as Paragraphs (7) through (14) in this subsection. The itemized program units are as follows:

- (1) early childhood education;
- (2) basic education;
- (3) special education, adjusted by subtracting the units derived from membership in class D special education programs in private, nonsectarian, nonprofit training centers;
- (4) bilingual multicultural education;
- (5) fine arts education;
- (6) elementary physical education;
- (7) size adjustment;
- (8) at-risk program;
- (9) enrollment growth or new district adjustment;
- (10) special education units derived from membership in class D special education programs in private, nonsectarian, nonprofit training centers;
- (11) national board for professional teaching standards certification;
- (12) home school student program unit;
- (13) home school student activities; and
- (14) charter school student activities.

B. The total program cost calculated as prescribed in Subsection A of this section includes the cost of early childhood, special, bilingual multicultural, fine arts and vocational education and other remedial or enrichment programs. It is the responsibility of the local school board or governing body of a charter school to determine its priorities in terms of the needs of the community served by that board. Except as otherwise provided in this section, funds generated under the Public School Finance Act are discretionary to local school boards and governing bodies of charter schools; provided that the special program needs as enumerated in this section are met; and provided further that if a public school has been rated D or F for two consecutive

years, the department shall ensure that the local school board or governing body of a charter school is prioritizing resources for the public school toward proven programs and methods linked to improved student achievement until the public school earns a C or better for two consecutive years.

History: 1953 Comp., § 77-6-18.1, enacted by Laws 1969, ch. 180, § 14; 1971, ch. 263, § 6; reenacted by 1974, ch. 8, § 8; 1976 (S.S.), ch. 32, § 2; 1977, ch. 244, § 1; 1986, ch. 33, § 15; 1990 (1st S.S.), ch. 3, § 4; 1993, ch. 237, § 1; 1997, ch. 40, § 3; 2003, ch. 144, § 1; 2003, ch. 152, § 7; 2005, ch. 206, § 1; 2006, ch. 94, § 12; 2007, ch. 347, § 1; 2007, ch. 348, § 2; 2007, ch. 365, § 1; 2011, ch. 10, § 6; 2014, ch. 61, § 1.

**The 2014 amendment**, effective May 21, 2014, incorporated the home school student program unit provision in the program cost calculation provisions of the Public School Finance Act; in Subsection A, added Paragraph (12); and in Subsection B, in the third sentence, after "enumerated in this section are met", added "and", and after "and provided", deleted "however" and added "further".

**The 2011 amendment**, effective June 17, 2011, required the department to ensure that public schools that are rated D or F prioritize resources to improve student achievement.

**Severability.** — Laws 2011, ch. 10, § 7 provided that if any part of application of this act is held invalid, the remainder or its application to other situations or persons shall not be affected.

**The 2007 amendment**, effective June 15, 2007, added home school student activities into the program cost calculation.

**The 2006 amendment**, effective July 1, 2007, added the governing body of a charter school in Subsection B.

**The 2005 amendment**, effective June 17, 2005, added national board certification in the program cost calculation in Subsection A.

**The 2003 amendment**, effective June 20, 2003, in Subsection A, substituted "through (5) in this subsection by the instructional" for "through (4) in this subsection by the instruction" following "as Paragraphs (1)", substituted "Paragraphs (6) through (9)" for "Paragraphs (5) through (8)" following "units itemized as"; added Paragraph A(5) and redesignated former Paragraphs A(5) to (8) as present Paragraphs A(6) to (9); and added Paragraph A(10).

**The 1997 amendment**, effective July 1, 1997, in Subsection A, substituted "membership in class D special education programs" for "class D special education MEM" throughout the subsection, added Subparagraph (6) and redesignated the remaining subparagraphs accordingly, and made a stylistic change.

**The 1993 amendment**, effective June 18, 1993, added "or new district adjustment" at the end of Paragraph (6) of Subsection A.

**The 1990 (1st S.S.) amendment**, effective July 1, 1990, in Subsection A, substituted "Paragraphs (5) through (7)" for "Paragraphs (5) and (6)" in the first sentence, "special education MEM" for "special education ADM" in Paragraph (3), added present Paragraph (6), and redesignated former Paragraph (6) as present Paragraph (7), substituting therein "special education MEM" for "special education ADM".

## **22-8-19. Early childhood education program units.**

A. The number of early childhood education program units is determined by multiplying the early childhood education MEM by the cost differential factor 1.44. Early childhood education students enrolled in half-day kindergarten programs shall be counted for 0.5 early childhood MEM. Early childhood education students enrolled in full-day kindergarten programs shall be counted for 1.0 early childhood education MEM.

B. For the purpose of calculating early childhood education program units, developmentally disabled three- and four-year-old students shall be counted in early childhood education membership. No developmentally disabled three- or four-year-old student shall be counted for more than 0.5 early childhood education MEM.

**History:** 1953 Comp., § 77-6-18.2, enacted by Laws 1969, ch. 180, § 15; reenacted by Laws 1974, ch. 8, § 9; 1976 (S.S.), ch. 32, § 3; 1990 (1st S.S.), ch. 3, § 5; 1997, ch. 40, § 4; 2000, ch. 107, § 2.

**The 2000 amendment,** effective May 17, 2000, changed how early childhood education students are counted for the early childhood education MEM from no more than 0.5 for all students to 0.5 for half-day kindergarten students and 1.0 for full-day students.

**The 1997 amendment,** effective July 1, 1997, added the Subsection A designation and added Subsection B.

**The 1990 (1st S.S.) amendment,** effective July 1, 1990, substituted "childhood education MEM" for "childhood education ADM" in both occurrences and "cost differential factor 1.44" for "cost differential factor 1.3".

### **22-8-19.1. Preschool programs; selected districts.**

A. The children, youth and families department shall fund preschool programs for zero- to five-year-old children in selected school districts. The children, youth and families department shall distribute any appropriation for this purpose to local entities upon approval by that department of an application from an individual school district or community-based early childhood education program. The preschool programs shall collaborate, where possible, with existing headstart programs or with other appropriate early childhood education programs in the community, and the preschool programs shall use one of the following three models:

- (1) a community-based early childhood education program;
- (2) a school-based early childhood education program; or
- (3) a home-based early childhood education program.

B. School districts may choose to contract with licensed community-based early childhood education programs already in existence. School-based early childhood education programs may

be housed in a school accredited by the public education department. A home-based early childhood education program may include a parents-as-teachers program, which supports parents in meeting the developmental learning and social growth needs of their young children.

C. Each preschool program shall have a strong parental involvement component, a staff development component and a procedural process to enable the children, youth and families department to monitor and evaluate the program. The curriculum for each program shall comprehensively address the total developmental needs of the child, including physical, cognitive, social and emotional needs, and shall include aspects of health care, nutrition, safety, the needs of the family and multicultural sensitivity, in coordination with other resources for families.

History: Laws 1992, ch. 83, § 1; 1993, ch. 47, § 1; 2012, ch. 14, § 1.

**Cross references.** — For transfer of powers and duties of former department of education, see 9-24-15 NMSA 1978.

**The 2012 amendment**, effective May 16, 2012, eliminated the office of child development and the child development board; assigned duties to the children, youth and families department; in Subsection A, in the second sentence, after "youth and families department", deleted "through the office of child development", and after "entities upon approval by", deleted "the children, youth and families" and added "that"; in Subsection B, changed "department of education" to "public education department"; and in Subsection C, in the first sentence, after "procedural process to enable the", deleted "office of child development" and added "children, youth and families department".

**The 1993 amendment**, effective June 18, 1993, deleted "Temporary provision" at the beginning of the catchline; substituted "children, youth and families department" for "state department of public education" in the first sentence of Subsection A; inserted "children, youth and families" in two places in the second sentence of Subsection A; designated the former third, fourth, and fifth sentences of Subsection A as current Subsection B; added "of education" at the end of the second sentence in current Subsection B; redesignated former Subsection B as current Subsection C; and added "in coordination with other resources for families" at the end of the final sentence of Subsection C.

## 22-8-20. Basic program units.

The number of basic program units is determined by multiplying the basic program MEM in each grade by the corresponding cost differential factor as follows:

Grades	Cost Differential Factor
1	1.2
2 and 3	1.18
4 through 6	1.045
7 through 12	1.25.

**History:** 1978 Comp., § 22-8-20, enacted by Laws 1991, ch. 85, § 3; 1993, ch. 2, § 1; 1993, ch.

226, § 21; 1993, ch. 226, § 22; 1993, ch. 228, § 2; 1993, ch. 228, § 3.

**Repeals and reenactments.** — Laws 1991, ch. 85, § 3 repealed former 22-8-20 NMSA 1978, as amended by Laws 1991, ch. 85, § 2, and enacted the above section, effective July 1, 1992.

**1993 amendments.** — Laws 1993, ch. 2, § 1, effective June 18, 1993, substituted "1.26" for "1.42" as the Cost Differential Factor for Grade 1.

Identical amendments to this section were enacted by Laws 1993, ch. 226, § 21, effective July 1, 1993, and Laws 1993, ch. 228, § 2, effective June 18, 1993 until July 1, 1994, which, under the column "Cost Differential Factor" substituted "1.2" for "1.42" for grade 1 and "1.18" for "1.1" for grades 2 and 3.

Identical amendments to this section were enacted by Laws 1993, ch. 226, § 22 and Laws 1993, ch. 228, § 3, both effective July 1, 1994, substituting "1.045" for "1.0" under the column "Cost Differential Factor" for grades 4 through 6.

### **22-8-21. Special education program units.**

A. For the purpose of the Public School Finance Act, special education programs for exceptional children are those approved by the department and classified as follows:

(1) class A programs, in which department certified individuals provide services to children whose individualized education programs require a minimal amount of special education and in which the ratio of students to professionals is regulated by the state board [department];

(2) class B programs, in which department certified individuals provide services to children whose individualized education programs require a moderate amount of special education and in which the ratio of students to professionals is regulated by the state board;

(3) class C programs, in which department certified individuals provide services to children whose individualized education programs require an extensive amount of special education and in which the ratio of students to professionals is regulated by the state board;

(4) class D programs, in which department certified individuals provide services to children whose individualized education programs require a maximum amount of special education and in which the ratio of students to professionals is regulated by the state board. Students in class D programs may be enrolled in private, nonsectarian, nonprofit educational training centers in accordance with the provisions of Section 22-13-8 NMSA 1978; and

(5) programs for developmentally disabled three- and four-year-old children meeting standards approved by the state board.

B. All students assigned to the programs for exceptional children classified in Subsection A of this section shall have been so assigned as a result of diagnosis and evaluation performed in accordance with the standards of the department before the students may be counted in the determination of special education program units as provided in Subsection C of this section.

C. The number of special education program units is the sum of the following:

(1) the MEM in approved class A and B programs as defined in Subsection A of this section multiplied by the cost differential factor .7;

(2) the MEM in approved class C programs as defined in Subsection A of this section multiplied by the cost differential factor 1.0;

(3) the MEM in approved class D programs as defined in Subsection A of this section multiplied by the cost differential factor 2.0;

(4) the MEM for developmentally disabled three- and four-year-old children as defined in Subsection A of this section multiplied by the cost differential factor 2.0; provided that no developmentally disabled three- or four-year-old student shall be counted for additional ancillary service units; and

(5) for related services ancillary to providing special education, the number of full-time-equivalent certified or licensed ancillary service and diagnostic service personnel multiplied by the cost differential factor 25.0.

D. For the purpose of calculating membership in class C and class D programs, students shall be counted in actual grade placement or according to chronological age if not in actual grade placement.

**History:** 1953 Comp., § 77-6-18.4, enacted by Laws 1969, ch. 180, § 17; 1971, ch. 263, § 7; 1972, ch. 87, § 2; 1973, ch. 351, § 2; reenacted by 1974, ch. 8, § 11; 1976 (S.S.), ch. 32, § 5; 1980, ch. 35, § 1; 1987, ch. 149, § 1; 1992, ch. 75, § 1; 1992, ch. 84, § 1; 1997, ch. 40, § 5.

**Cross references.** — For transfer of powers and duties of former state board, see 9-24-15 NMSA 1978.

**The 1997 amendment,** effective July 1, 1997, in Subsection C, rewrote Paragraph (1), substituted "MEM in approved class" for "special education in class" in Paragraphs (2) and (3), substituted "2.0" for "3.5; and" in Paragraph (3), in Paragraph (4), deleted "special education" preceding "MEM", deleted "Paragraph (5) of" preceding "Subsection A", substituted "2.0" for "3.5", and added "and" at the end of the paragraph and added Paragraph (5); and added Subsection D.

**The 1992 amendment,** effective May 20, 1992, deleted "of education" following "department" several times throughout the section; rewrote Subsections A(1) to A(4); deleted "to the division" following "certified" in Subsection C(1); and substituted "MEM" for "ADM" several times in Subsections C(2) to C(4).

## **22-8-22. Bilingual multicultural education program units.**

The number of bilingual multicultural education program units is determined by multiplying the full-time-equivalent MEM in programs implemented in accordance with the provisions of the Bilingual Multicultural Education Act [Chapter 22, Article 23 NMSA 1978] by the cost differential factor 0.35, effective July 1, 1990; 0.4, effective July 1, 1991; .425, effective July 1, 1992; 0.45, effective July 1, 1993; and 0.5, effective July 1, 1994.

**History:** 1953 Comp., § 77-6-18.6, enacted by Laws 1974, ch. 8, § 13; 1976 (S.S.), ch. 32, § 6;

1990 (1st S.S.), ch. 3, § 6; 1992, ch. 75, § 2; 1993, ch. 238, § 1.

**The 1993 amendment**, effective June 18, 1993, inserted "0.45, effective July 1, 1993"; substituted "1994" for "1993" at the end of the section; and made minor stylistic changes.

**The 1992 amendment**, effective May 20, 1992, substituted ".425" for "0.45" near the end of the section.

**The 1990 (1st S.S.) amendment**, effective July 1, 1990, substituted "full-time-equivalent MEM" for "full-time-equivalent ADM" and "differential factor 0.35" for "differential factor 0.3" and added at the end the language beginning "effective July 1, 1990".

### 22-8-23. Size adjustment program units.

A. An approved public school with a MEM of less than 400, including early childhood education full-time-equivalent MEM but excluding membership in class C and class D programs and excluding full-time-equivalent membership in three- and four-year-old developmentally disabled programs, is eligible for additional program units. Separate schools established to provide special programs, including but not limited to vocational and alternative education, shall not be classified as public schools for purposes of generating size adjustment program units. The number of additional program units to which a school district is entitled under this subsection is the sum of elementary-junior high units and senior high units computed in the following manner:

$$\begin{array}{l} \text{Elementary-Junior High Units} \\ 200 - \text{MEM} \times 1.0 \times \text{MEM} = \text{Units} \\ 200 \end{array}$$

where MEM is equal to the membership of an approved elementary or junior high school, including early childhood education full-time-equivalent membership but excluding membership in class C and class D programs and excluding full-time-equivalent membership in three- and four-year-old developmentally disabled programs;

$$\begin{array}{l} \text{Senior High Units} \\ 200 - \text{MEM} \times 2.0 \times \text{MEM} = \text{Units} \\ 200 \end{array}$$

or

Senior High Units

$$\frac{400 - \text{MEM} \times 1.6 \times \text{MEM}}{400} = \text{Units}$$

whichever calculation for senior high units is higher, where MEM is equal to the membership of an approved senior high school excluding membership in class C and class D programs.

B. A school district with total MEM of less than 4,000, including early childhood education full-time-equivalent MEM, is eligible for additional program units. The number of additional program units to which a district is entitled under this subsection is the number of district units computed in the following manner:

District Units

$$\frac{4000 - \text{MEM} \times 0.15 \times \text{MEM}}{4000} = \text{Units}$$

where MEM is equal to the total district membership, including early childhood education full-time-equivalent membership.

C. A school district with over 10,000 MEM with a ratio of MEM to senior high schools less than 4,000:1 is eligible for additional program units based on the number of approved regular senior high schools that are not eligible for senior high units under Subsection A of this section. The number of additional program units to which an eligible school district is entitled under this subsection is the number of units computed in the following manner:

$$\frac{4000 - \text{MEM} \times 0.50 \times \text{MEM}}{\text{Senior High Schools}} = \text{Units}$$

where MEM is equal to the total district membership, including early childhood education full-time-equivalent membership, and where senior high schools are equal to the number of

approved regular senior high schools in the district.

**History:** 1953 Comp., § 77-6-18.7, enacted by Laws 1974, ch. 8, § 14; reenacted by Laws 1975, ch. 119, § 1; 1976 (S.S.), ch. 32, § 7; 1977, ch. 82, § 1; 1979, ch. 276, § 1; 1981, ch. 87, § 1; 1989, ch. 221, § 1; 1991, ch. 85, § 4; 1993, ch. 87, § 1; 1997, ch. 40, § 6.

**The 1997 amendment**, effective July 1, 1997, rewrote the computations throughout the section; substituted "membership in class C and class D programs and excluding full-time-equivalent membership in three- and four-year-old developmentally disabled programs" for "special education class C and class D membership" throughout Subsection A; deleted "and special education membership" following "full-time-equivalent membership" throughout Subsection B; and deleted former Subsections D through F, relating to school districts with membership greater than ten thousand but less than fifteen thousand, school districts with membership greater than fifteen thousand but less than thirty-five thousand, and school districts with membership greater than thirty-five thousand, respectively.

**The 1993 amendment**, effective June 18, 1993, deleted "early childhood education" following "not limited to" in the first sentence of Subsection A and made a minor stylistic change.

**The 1991 amendment**, effective July 1, 1991, in Subsection D, substituted "fifteen thousand" for "thirty-five thousand" near the beginning and ".15" for ".2" in the formula; added Subsection E; designated former Subsection E as Subsection F; and substituted ".023" for ".008" in the formula in Subsection F.

**The 1989 amendment**, effective July 1, 1991, substituted "MEM" for "ADM" and deleted "average daily" preceding "membership" several times throughout the section, added Subsections D and E, and made minor stylistic changes throughout the section.

## ANNOTATIONS

**School is only entitled to size adjustment program units if it meets the statutory criteria.** Taos Mun. Schs. Charter Sch. v. Davis, 2004-NMCA-129, 136 N.M. 543, 102 P.3d 102, cert. denied, 2004-NMCERT-010, 136 N.M. 542, 101 P.3d 808.

### 22-8-23.1. Enrollment growth program units.

A. A school district or charter school with an increase in MEM equal to or greater than one percent, when compared with the immediately preceding year, is eligible for additional program units. The increase in MEM shall be calculated as follows:

(Current Year MEM - Previous Year MEM)

Previous Year MEM      x 100 = Percent Increase.

The number of additional program units shall be calculated as follows:

((Current Year MEM - Previous Year MEM) - (Current Year MEM x .01)) x 1.5 = Units.

B. In addition to the units calculated in Subsection A of this section, a school district or charter school with an increase in MEM equal to or greater than one percent, when compared with the immediately preceding year, is eligible for additional program units. The increase in

MEM shall be calculated in the following manner:

(Current Year MEM - Previous Year MEM)

Previous Year MEM x 100 = Percent Increase.

The number of additional program units to which an eligible school district or charter school is entitled under this subsection is the number of units computed in the following manner:

(Current Year MEM - Previous Year MEM) x .50 = Units.

C. As used in this section:

- (1) "current year MEM" means MEM on the first reporting date of the current year;
- (2) "MEM" means the total school district or charter school membership, including early childhood education full-time-equivalent membership and special education membership, but excluding full-day kindergarten membership for the first year that full-day kindergarten is implemented in a school pursuant to Subsection D of Section 22-13-3.2 NMSA 1978; and
- (3) "previous year MEM" means MEM on the first reporting date of the previous year.

History: 1978 Comp., § 22-8-23.1, enacted by Laws 1990 (1st S.S.), ch. 3, § 7; 1990 (1st S.S.), ch. 3, § 8; 2003, ch. 156, § 1; 2003, ch. 386, § 1; 2006, ch. 94, § 13; 2010, ch. 116, § 4.

**The 2010 amendment**, effective May 19, 2010, in Paragraph (1) of Subsection C, after "means MEM on the", deleted "fortieth day" and added "first reporting date" and in Subsection C(3), after "means MEM on the", deleted "fortieth day" and added "first reporting date".

**Temporary provisions.** — Laws 2010, ch. 116, § 9 provided that references in the Public School Code pertaining to the fortieth-day or forty-day report of public school membership or enrollment shall be deemed to be references to the first reporting date, which is the second Wednesday in October; references pertaining to the eightieth-day or eighty-day report of public school membership or enrollment shall be deemed to be references to the second reporting date, which is the second Wednesday in December; and references pertaining to the one-hundred twentieth-day or one-hundred twenty-day report of public school membership or enrollment shall be deemed to be references to the third reporting date, which is the second Wednesday in February.

As the public schools transition from former reporting dates to new reporting dates, the public education department may use any combination of former and new reporting dates as necessary to develop membership and cost projections and budgets for the 2010-2011 school year.

**The 2006 amendment**, effective July 1, 2007, added charter school and (Current Year MEM - Previous Year MEM) in Subsections A and B; added charter school and changed Section 22-2-19 NMSA 1978 to Section 22-13-3.2 NMSA 1978 in Paragraph (2) of Subsection C.

**The 2003 amendment**, effective June 20, 2003, rewrote the section to the extent that a detailed comparison is impracticable.

## 22-8-23.2. New district adjustment; additional program units.

A. A newly created school district is eligible for additional program units. The number of additional program units to which a newly created school district is entitled under this subsection is the number of units computed in the following manner:

$$(\text{MEM for current year}) \times .147 = \text{Units}$$

where MEM is equal to the total district membership, including early childhood education full-time equivalent membership and special education membership.

B. A school district whose membership decreases as a result of the establishment of a newly created school district is eligible for additional program units. The number of additional program units to which that district is entitled under this subsection is the number of units computed in the following manner:

$$(\text{MEM for prior year} - \text{MEM for current year}) \times .17 = \text{Units}$$

where MEM is equal to the total district membership, including early childhood education full-time equivalent membership and special education membership.

C. As used in this section, "newly created school district" means a local school district not in existence during the immediately preceding school year.

**History:** 1978 Comp., § 22-8-23.2, enacted by Laws 1993, ch. 237, § 2.

### **22-8-23.3. At-risk program units.**

A. A school district is eligible for additional program units if it establishes within its state board [department] approved educational plan identified services to assist students to reach their full academic potential. A school district receiving additional at-risk program units shall include a report of specified services in its annual accountability report pursuant to Section 22-1-6 NMSA 1978 [repealed]. The number of additional units to which a school district is entitled under this section is computed in the following manner:

$$\text{At-Risk Index} \times \text{MEM} = \text{Units}$$

where MEM is equal to the total district membership, including early childhood education, full-time-equivalent membership and special education membership and where the at-risk index

is calculated in the following manner:

$$\text{Three-Year Average Total Rate} \times 0.0915 = \text{At-Risk Index.}$$

B. To calculate the three-year average total rate, the department shall compute a three-year average of the school district's percentage of membership used to determine its Title I allocation, a three-year average of the percentage of membership classified as English language learners using criteria established by the federal office of civil rights and a three-year average of the percentage of student mobility. The department shall then add the three-year average rates. The number obtained from this calculation is the three-year average total rate.

C. The department shall recalculate the at-risk index for each school district every year. For the 2002-2003, 2003-2004 and 2004-2005 school years, a school district shall not receive less than ninety percent of the at-risk funding generated in fiscal year 2001.

**History:** 1978 Comp., § 22-8-23.3, enacted by Laws 1997, ch. 40, § 7; 2002, ch. 68, § 1.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

Laws 2004, ch. 25, § 27, provided that all references to the superintendent of public instruction shall be deemed references to the secretary of public education and all references to the former state board of education or state department of education shall be deemed references to the public education department. See 9-24-15 NMSA 1978.

Section 22-1-6 NMSA 1978 was repealed by Laws 2003, ch. 153, § 73, effective April 4, 2003.

**The 2002 amendment**, effective May 15, 2002, substituted "Three-Year Average Total Rate x 0.0915" for "Refined At-Risk Cluster x 0.015" in the formula at the end of Subsection A; rewrote Subsection B by deleting provisions relating to refined at-risk clusters and inserting references to calculations based on three-year average rates; and, in Subsection C, substituted "year" for "two years" at the end of the present first sentence and added the second sentence.

#### **22-8-23.4. National board for professional teaching standards; certified teachers program units.**

The number of program units for teachers certified by the national board for professional teaching standards is determined by multiplying by one and one-half the number of teachers certified by the national board for professional teaching standards employed by the school district or charter school on or before the first reporting date of the school year and verified by the department. Department approval of these units shall be contingent on verification by the school district or charter school that these teachers are receiving a one-time salary differential equal to or greater than the amount generated by the units multiplied by the program unit value during the fiscal year in which the school district or charter school will receive these units.

**History:** Laws 2003, ch. 144, § 2; 2003, ch. 152, § 9; 2006, ch. 94, § 14; 2010, ch. 116, § 5.

The 2010 amendment, effective May 19, 2010, in the first sentence, after "charter school on or before the", deleted "fortieth day" and added "first reporting date".

**Temporary provisions.** — Laws 2010, ch. 116, § 9 provided that references in the Public School Code pertaining to the fortieth-day or forty-day report of public school membership or enrollment shall be deemed to be references to the first reporting date, which is the second Wednesday in October; references pertaining to the eightieth-day or eighty-day report of public school membership or enrollment shall be deemed to be references to the second reporting date, which is the second Wednesday in December; and references pertaining to the one-hundred twentieth-day or one-hundred twenty-day report of public school membership or enrollment shall be deemed to be references to the third reporting date, which is the second Wednesday in February.

As the public schools transition from former reporting dates to new reporting dates, the public education department may use any combination of former and new reporting dates as necessary to develop membership and cost projections and budgets for the 2010-2011 school year.

The 2006 amendment, effective July 1, 2007, added charter schools.

#### **22-8-23.5. Fine arts education program units.**

The number of fine arts education program units is determined by multiplying the full-time-equivalent MEM in programs implemented in accordance with the provisions of the Fine Arts Education Act [Chapter 22, Article 15D NMSA 1978] by the cost differential factor of 0.0166 for fiscal year 2004, 0.0332 for fiscal year 2005 and 0.05 for fiscal year 2006 and succeeding fiscal years.

**History:** Laws 2003, ch. 144, § 3 and by Laws 2003, ch. 152, § 8.

**Compiler's notes.** — Laws 2003, ch. 144, § 3 and Laws 2003, ch. 152, § 8, both effective June 20, 2003 enacted identical new sections.

#### **22-8-23.6. Charter school student activities program unit.**

The charter school student activities program unit for a school district is determined by multiplying the number of charter school students who are participating in school district activities governed by the New Mexico activities association by the cost differential factor of 0.1. The student activities program unit shall be paid to the school district in which it is generated. A charter school student is eligible to participate in school district activities at the public school in the attendance zone in which the student resides, according to the New Mexico activities association guidelines. If the student chooses to participate at a public school other than the one in the attendance zone in which the student resides, the student shall be subject to New Mexico activities association transfer guidelines.

**History:** Laws 2006, ch. 94, § 15.

**Effective dates.** — Laws 2006, ch. 94, § 61 made Laws 2006, ch. 94, § 15 effective July 1, 2007.

### **22-8-23.7. Elementary physical education program units.**

A. The number of elementary physical education program units is determined by multiplying the number of students in elementary physical education by the cost differential factor of six one-hundredths.

B. As used in this section, "elementary physical education" means eligible physical education programs that serve students in kindergarten through grade six in a public school classified by the department as an elementary school.

History: Laws 2007, ch. 348, § 1.

**Effective dates.** — Laws 2007, ch. 348 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 15, 2007, 90 days after the adjournment of the legislature.

### **22-8-23.8. Home school student activities program unit.**

The home school student activities program unit for a school district is determined by multiplying the number of home school students who are participating in school district activities governed by the New Mexico activities association by the cost differential factor of 0.1. The home school student activities program unit shall be paid to the school district in which it is generated. A home school student is eligible to participate in up to three school district activities at the public school in the attendance zone in which the student resides, according to the New Mexico activities association guidelines. The school district shall verify each home school student's academic eligibility to participate in school district activities. As used in this section, "activities" means athletics, co-curricular and extracurricular activities sanctioned by the New Mexico activities association.

History: Laws 2007, ch. 365, § 2; 2009, ch. 93, § 1; 2012, ch. 23, § 1.

**The 2012 amendment**, effective May 16, 2012, eliminated the requirement that home school student activities program units be based on athletic activities; in the third sentence, after "school district", deleted "athletic"; in the fourth sentence, after "school district", deleted "athletic"; and added the last sentence.

**Applicability.** — Laws 2012, ch. 23, § 2 provided that the provisions of Laws 2012, ch. 23, § 1 apply to the 2012-2013 school year and subsequent school years.

**The 2009 amendment**, effective June 19, 2009, increased the number of school district activities in which a home school student may participate from one athletic activity to three athletic activities.

### **22-8-23.9. Home schooled student program units.**

Notwithstanding the provision in Section 22-8-2 NMSA 1978 defining a qualified student as one who is regularly enrolled in one-half or more of the minimum course requirements approved by the department for public school students, home school students may take one or more classes

at public schools and, if so, shall generate program units as provided in this section. The home school student program unit for a school district is determined by multiplying the number of home school students who are enrolled in one or more classes by the cost differential factor 0.25 per class per home school student up to the enrollment required for the home school student to meet the definition of "qualified student". The home school student program units shall be paid to the school district in which they are generated. A home school student is eligible to enroll in a public school in the attendance zone in which the student resides or in another public school outside the attendance zone as provided in Section 22-1-4 NMSA 1978. The school district shall verify each home school student's academic and other eligibility to enroll in the class.

History: Laws 2013, ch. 113, § 1; 2014, ch. 61, § 2.

The 2014 amendment, effective May 21, 2014, changed "home schooled" to "home school" throughout the section.

**Applicability.** — Laws 2013, ch. 113, § 2 provided that Laws 2013, ch. 113, § 1 applies to the 2014-2015 school year and subsequent school years.

**22-8-24. Instructional staff training and experience index; definitions; factors; calculations.**

A. For the purpose of calculating the instructional staff training and experience index, the following definitions and limitations shall apply:

(1) "instructional staff" means the personnel assigned to the instructional program of the school district, excluding principals, substitute teachers, instructional aides, secretaries and clerks;

(2) the number of instructional staff to be counted in calculating the instructional staff training and experience index is the actual number of full-time equivalent instructional staff on the October payroll;

(3) the number of years of experience to be used in calculating the instructional staff training and experience index is that number of years of experience allowed for salary increment purposes on the salary schedule of the school district; and

(4) the academic degree and additional credit hours to be used in calculating the instructional staff training and experience index is the degree and additional semester credit hours allowed for salary increment purposes on the salary schedule of the school district.

B. The factors for each classification of academic training by years of experience are provided in the following table:

Academic Classification	Years of Experience				
	0-2	3-5	6-8	9-15	Over

Bachelor's degree or less	.75	.90	1.00	1.05	1.
Bachelor's degree or 15 credit hours	.80	.95	1.00	1.10	1.
Master's degree or bachelor's degree plus 45 credits hours	.85	1.00	1.05	1.15	1.
Master's degree plus 15 credit hours	.90	1.05	1.15	1.30	1.
Post-master's degree or master's degree plus 45 credit hours	1.00	1.15	1.30	1.40	1.

C. The instructional staff training and experience index for each school district shall be calculated in accordance with instructions issued by the state superintendent [secretary]. The following calculations shall be computed:

- (1) multiply the number of full-time equivalent instructional staff in each academic classification by the numerical factor in the appropriate "years of experience" column provided in the table in Subsection B of this section;
- (2) add the products calculated in Paragraph (1) of this subsection; and
- (3) divide the total obtained in Paragraph (2) of this subsection by the total number of full-time equivalent instructional staff.

D. In the event that the result of the calculation of the training and experience index is 1.0 or less, the district's factor shall be no less than 1.0.

E. In the event that a new school district is created, the training and experience index for that district is 1.12.

**History:** 1953 Comp., § 77-6-18.8, enacted by Laws 1974, ch. 8, § 15; 1975, ch. 119, § 2; 1976 (S.S.), ch. 32, § 8; 1993, ch. 91, § 1; 1993, ch. 237, § 3.

**Cross references.** —For transfer of powers and duties of former state superintendent, see 9-24-15 NMSA 1978.

**1993 amendments.** — Laws 1993, ch. 91, § 1, effective June 18, 1993, substituted "state superintendent" for "chief" in the first sentence of Subsection C and "1.0" for ".95" in two places in Subsection D, was approved March 31, 1993. Laws 1993, ch. 237, § 3, effective June 18, 1993, substituted "state superintendent" for "chief" in Subsection C, substituted "1.0" for ".95" in two places in Subsection D and added Subsection E. This section was set out as amended by Laws 1993, ch. 237, § 3. See 12-1-8 NMSA 1978.

## ANNOTATIONS

**Superintendent's interpretation of section entitled to deference.** — Subsection B is ambiguous; however, the superintendent's interpretation that interim credit hours are lost once a higher degree is conferred would be accorded substantial weight and deference. *Bd. of Educ. v. N. M. State Dep't of Pub. Educ.*, 1999-NMCA-156, 128 N.M. 398, 993 P.2d 112, cert. denied, 128 N.M. 148, 990 P.2d 822 (1999).

### **22-8-25. State equalization guarantee distribution; definitions; determination of amount.**

A. The state equalization guarantee distribution is that amount of money distributed to each school district to ensure that its operating revenue, including its local and federal revenues as defined in this section, is at least equal to the school district's program cost. For state-chartered charter schools, the state equalization guarantee distribution is the difference between the state-chartered charter school's program cost and the two percent withheld by the department for administrative services.

B. "Local revenue", as used in this section, means seventy-five percent of receipts to the school district derived from that amount produced by a school district property tax applied at the rate of fifty cents (\$.50) to each one thousand dollars (\$1,000) of net taxable value of property allocated to the school district and to the assessed value of products severed and sold in the school district as determined under the Oil and Gas Ad Valorem Production Tax Act [Chapter 7, Article 32 NMSA 1978] and upon the assessed value of equipment in the school district as determined under the Oil and Gas Production Equipment Ad Valorem Tax Act [Chapter 7, Article 34 NMSA 1978].

C. "Federal revenue", as used in this section, means receipts to the school district, excluding amounts that, if taken into account in the computation of the state equalization guarantee distribution, result, under federal law or regulations, in a reduction in or elimination of federal school funding otherwise receivable by the school district, derived from the following:

(1) seventy-five percent of the school district's share of forest reserve funds distributed in accordance with Section 22-8-33 NMSA 1978; and

(2) seventy-five percent of grants from the federal government as assistance to those areas affected by federal activity authorized in accordance with Title 20 of the United States Code, commonly known as "PL 874 funds" or "impact aid".

D. To determine the amount of the state equalization guarantee distribution, the department shall:

(1) calculate the number of program units to which each school district or charter school is entitled using an average of the MEM on the second and third reporting dates of the prior year; or

(2) calculate the number of program units to which a school district or charter school

operating under an approved year-round school calendar is entitled using an average of the MEM on appropriate dates established by the department; or

(3) calculate the number of program units to which a school district or charter school with a MEM of two hundred or less is entitled by using an average of the MEM on the second and third reporting dates of the prior year or the fortieth day of the current year, whichever is greater; and

(4) using the results of the calculations in Paragraph (1), (2) or (3) of this subsection and the instructional staff training and experience index from the October report of the prior school year, establish a total program cost of the school district or charter school;

(5) for school districts, calculate the local and federal revenues as defined in this section;

(6) deduct the sum of the calculations made in Paragraph (5) of this subsection from the program cost established in Paragraph (4) of this subsection;

(7) deduct the total amount of guaranteed energy savings contract payments that the department determines will be made to the school district from the public school utility conservation fund during the fiscal year for which the state equalization guarantee distribution is being computed; and

(8) deduct ninety percent of the amount certified for the school district by the department pursuant to the Energy Efficiency and Renewable Energy Bonding Act [Chapter 6, Article 21D NMSA 1978].

E. Reduction of a school district's state equalization guarantee distribution shall cease when the school district's cumulative reductions equal its proportional share of the cumulative debt service payments necessary to service the bonds issued pursuant to the Energy Efficiency and Renewable Energy Bonding Act.

F. The amount of the state equalization guarantee distribution to which a school district is entitled is the balance remaining after the deductions made in Paragraphs (6) through (8) of Subsection D of this section.

G. The state equalization guarantee distribution shall be distributed prior to June 30 of each fiscal year. The calculation shall be based on the local and federal revenues specified in this section received from June 1 of the previous fiscal year through May 31 of the fiscal year for which the state equalization guarantee distribution is being computed. In the event that a school district or charter school has received more state equalization guarantee funds than its entitlement, a refund shall be made by the school district or charter school to the state general fund.

History: 1953 Comp., § 77-6-19, enacted by Laws 1969, ch. 180, § 19; 1971, ch. 263, § 9; 1972, ch. 90, § 1; reenacted by Laws 1974, ch. 8, § 16; 1975, ch. 119, § 3; 1979, ch. 268, § 2; 1979, ch. 278, § 1; reenacted by Laws 1981, ch. 176, §§ 3, 4, 5; 1986, ch. 32, § 20; 1986, ch. 33, § 16; 1988, ch. 63, § 1; 1988, ch. 64, § 29; 1989, ch. 258, § 1; 1990, ch. 94, § 3; 1993, ch. 226, § 23;

1993, ch. 231, § 14; 1997, ch. 40, § 8; 1999, ch. 275, § 1; 2002, ch. 63, § 1; 2005, ch. 176, § 12; 2005, ch. 291, § 1; 2006, ch. 94, § 16; 2010, ch. 116, § 6.

**Repeals.** — Laws 2006, ch. 94, § 60 repealed Laws 2005, ch. 176, § 12, effective July 1, 2007.

**Cross references.** — For state-support reserve fund, see 22-8-31 NMSA 1978.

For PL 874 funds, see 20 USCS § 7701 et seq.

**The 2010 amendment**, effective May 19, 2010, in Subsection D(1), after "average of the MEM on the", deleted "eightieth and one-hundred twentieth days" and added "second and third reporting dates"; and in Subsection D(3), after "average of the MEM on the", deleted "eightieth and one-hundred twentieth days" and added "second and third reporting dates".

**Temporary provisions.** — Laws 2010, ch. 116, § 9 provided that references in the Public School Code pertaining to the fortieth-day or forty-day report of public school membership or enrollment shall be deemed to be references to the first reporting date, which is the second Wednesday in October; references pertaining to the eightieth-day or eighty-day report of public school membership or enrollment shall be deemed to be references to the second reporting date, which is the second Wednesday in December; and references pertaining to the one-hundred twentieth-day or one-hundred twenty-day report of public school membership or enrollment shall be deemed to be references to the third reporting date, which is the second Wednesday in February.

As the public schools transition from former reporting dates to new reporting dates, the public education department may use any combination of former and new reporting dates as necessary to develop membership and cost projections and budgets for the 2010-2011 school year.

**The 2006 amendment**, effective July 1, 2007, provided for the state equalization guarantee distribution for state-chartered charter schools in Subsection A; added charter schools in Paragraphs (1) through (5) of Subsection D and in Subsection G and deleted condition that required the enactment of House Bill 32 or similar legislation of the first session of the forty-seventh legislature in Paragraph (8) of Subsection D and in Subsection E.

**The 2005 amendments**, effective July 1, 2005, deleted the former provision of Subsection B which provided that the school district shall budget and expend twenty percent of the total revenue receipts for capital outlay; deleted the former provision of Subsection C(1) which provided that the school district shall budget and expend twenty percent of the total forest reserve receipts for capital outlay; deleted the former provision of Subsection C(2) that the school district shall budget and expend twenty percent of the grant receipts for capital outlay; deleted the former provision in Subsection D(3) that the number of program units be calculated using the average MEM on the fortieth day of the prior year; added Subsection D(8) to provide that to determine the amount of the state equalization guarantee distribution, the department shall deduct ninety percent of the amount certified for the school district by the department pursuant to the Energy Efficiency and Renewal Energy Bonding Act, if the act becomes law pursuant to House Bill 32 or similar legislation of the first session of the forty-seventh legislature; and added Subsection E to provide that reduction of a district's state equalization guarantee distribution shall cease when the district's cumulative reductions equal its proportional share of cumulative debt service payments to service the bonds issued pursuant to the Efficiency and Renewal Energy Bonding Act, if the act became law pursuant to House Bill 32 or similar legislation of the first session of the forty-seventh legislature; and changed "state superintendent" and "state board" to "department".

**The 2002 amendment**, effective July 1, 2002, deleted "as defined in the manual of accounting and budgeting provided in Section 22-8-5 NMSA 1978" at the end of Subsections B, C(1), and C(2); in

Subsection D, deleted provisions for calculating program units effective between July 1, 1999 and July 1, 2000 in Paragraph (1), substituted "an average of the MEM on appropriate dates" for "the basic program membership on an appropriate date" in Paragraph (2); and, in Paragraph (3), substituted "an average of the MEM on the fortieth, eightieth and one hundred twentieth days of the prior year or the fortieth day of the current year" for "the basic program membership on the fortieth day of either the prior or the current year", and deleted a proviso relating to special education program units.

**The 1999 amendment**, effective June 18, 1999, rewrote the section, changing the percentage of local revenue credit calculated in the state equalization guarantee distribution from ninety-five percent to seventy-five percent, and requiring the use of prior year average enrollment counts on certain days for the calculation of program units for distribution of the state equalization funds.

**The 1997 amendment**, effective July 1, 1997, in Subsection D, substituted "basic program membership of the fortieth day for all programs; provided that special education program units shall be calculated using the membership in special education programs on December 1" for "membership of the fortieth day of the school year, except for school districts with a MEM of 200 or less where the number of program units shall be calculated on the fortieth day membership of either the prior year or the current year, whichever is greater, for all programs except special education, which shall be calculated by using the membership on December 1 of the school year" in Paragraph (1); inserted "basic program" in Paragraph (2); added Paragraph (3) and redesignated the remaining paragraphs accordingly; inserted "distribution is being computed" in Subsection G; and made stylistic changes throughout the section.

**The 1993 amendment**, effective June 18, 1993, added Paragraph (6) in Subsection D; substituted "deductions made in Paragraphs (5) and (6)" for "deduction made in Paragraph (5)" in Subsection E; and inserted the language beginning ", and then reduced by the total" and ending "distribution is being computed," following "Oil and Gas Production Equipment Ad Valorem Tax Act" in Subsection G.

**The 1990 amendment**, effective May 16, 1990, substituted "on December 1 of the school year" for "the fortieth or eightieth day of the school year whichever is greater" at the end of Paragraph (1) of Subsection D.

**The 1989 amendment**, effective June 16, 1989, inserted "upon the assessed value of equipment in the school district as determined under" near the end of Subsection B; substituted "a MEM" for "an ADM" near the middle of Subsection D(1); added present Subsection D(2); redesignated former Subsections D(2) through D(4) as present Subsections D(3) through D(5); in present Subsection D(3) inserted "or (2)"; in present Subsection D(5) substituted "Paragraph (4)" for "Paragraph (3)" and "Paragraph (3)" for "Paragraph (2)"; and in Subsection G substituted "Paragraphs (1) or (2) and (3)" for "Paragraphs (1) and (2)" near the middle of the first paragraph and inserted "upon the assessed value of equipment in the school district as determined under" near the end of that paragraph.

**The 1988 amendment**, effective July 1, 1988, amended Subsections C(1), and C(2); deleted Subsection C(3) regarding grants from the federal government to public secondary schools; and substituted "state superintendent" for "director of the office of education" in Subsection D.

## ANNOTATIONS

**Law reviews.** — For note, "Indirect Funding of Sectarian Schools: A Discussion of the Constitutionality of State School Voucher Programs Under Federal and New Mexico Law After *Zelman v. Simmons-Harris*," see 34 N.M.L. Rev. 194 (2004).

For article, "No Cake For Zuni: The Constitutionality of New Mexico's Public School Capital Finance

System," see 37 N.M.L. Rev. 307 (2007).

**22-8-25.1. Additional per unit distribution from public school fund.**

The legislature shall maintain each year in the public school fund an amount equal to the amount of revenue produced by all school districts pursuant to Paragraph (2) of Subsection B of Section 7-37-7 NMSA 1978 for which credit is required to be taken pursuant to Section 22-8-25 NMSA 1978. Each year the department shall distribute to each school district an amount determined by the department on a per program unit basis which shall be included within the state equalization guarantee distribution made pursuant to the general appropriation act.

**History:** 1953 Comp., § 22-8-25.1, enacted by Laws 1985 (1st S.S.), ch. 15, § 17; 1988, ch. 64, § 30.

**Cross references.** — For the public school fund, see 22-8-14 NMSA 1978.

**The 1988 amendment,** effective May 18, 1988, in the second sentence, substituted "department" for "director of the office of education" at the first occurrence of that word, "department" for "director" at the second occurrence, and "included within" for "in addition to".

**22-8-26. Transportation distribution.**

A. Money in the transportation distribution of the public school fund shall be used only for the purpose of making payments to each school district or state-chartered charter school for the to-and-from school transportation costs of students in grades kindergarten through twelve attending public school within the school district or state-chartered charter school and of three- and four-year-old children who meet the department approved criteria and definition of developmentally disabled and for transportation of students to and from their regular attendance centers and the place where vocational education programs are being offered.

B. In the event a school district's or state-chartered charter school's transportation allocation exceeds the amount required to meet obligations to provide to-and-from transportation, three- and four-year-old developmentally disabled transportation and vocational education transportation, fifty percent of the remaining balance shall be deposited in the transportation emergency fund.

C. Of the excess amount retained by the school district or state-chartered charter school, at least twenty-five percent shall be used for to-and-from transportation-related services, excluding salaries and benefits, and up to twenty-five percent may be used for other transportation-related services, excluding salaries and benefits as defined by rule of the department.

D. In the event the sum of the proposed transportation allocations to each school district or state-chartered charter school exceeds the amounts in the transportation distribution, the allocation to each school district or state-chartered charter school shall be reduced in the proportion that the school district or state-chartered charter school allocation bears to the total

statewide transportation distribution.

E. A local school board or governing body of a state-chartered charter school, with the approval of the state transportation director, may provide additional transportation services pursuant to Section 22-16-4 NMSA 1978 to meet established program needs.

F. Nothing in this section prohibits the use of school buses to transport the general public pursuant to the Emergency Transportation Act [22-17-1 through 22-17-4 NMSA 1978].

History: 1953 Comp., § 77-6-22, enacted by Laws 1967, ch. 16, § 76; 1969, ch. 180, § 21; 1974, ch. 73, § 1; 1975, ch. 342, § 2; 1976 (S.S.), ch. 20, § 1; 1978, ch. 127, § 3; 1979, ch. 67, § 1; 1979, ch. 289, § 1; 1979, ch. 305, § 2; 1987, ch. 149, § 2; 1988, ch. 64, § 31; 1995, ch. 208, § 1; 1999 (1st S.S.), ch. 11, § 1; 2001, ch. 48, § 1; 2006, ch. 94, § 17.

**Cross references.** — For transportation of students generally, see 22-16-1 NMSA 1978 et seq.

For transfer of powers and duties of the former state board, see 9-24-15 NMSA 1978.

For other divisions of the public education department, see 9-24-4 NMSA 1978.

For the transportation emergency fund, see 22-8-29.6 NMSA 1978.

**The 2006 amendment**, effective July 1, 2007, added state-chartered charter schools in Subsections A through D and added governing body of a state-chartered charter school in Subsection E.

**The 2001 amendment**, effective June 15, 2001, added Subsection F.

**The 1999 amendment**, effective May 21, 1999, substituted "fifty percent of the remaining balance shall be deposited in the transportation emergency fund" for "the district shall revert remaining transportation funds to the transportation distributon in the department" in Subsection B; added Subsection C and redesignated the subsequent subsections accordingly; updated a section reference in Subsection E; and made a minor stylistic change.

**The 1995 amendment**, effective July 1, 1995, rewrote Subsections A and B, deleted former Subsection C relating to an objective allocation formula developed by the transportation director and superintendent, rewrote and redesignated former Subsection D as Subsection C, deleted former Subsection E relating to negotiation of school bus contracts, and redesignated former Subsection F as Subsection D.

**The 1988 amendment**, effective May 18, 1988, deleted "of instruction" following "superintendent" at the end of Subsection C.

## ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — Buses: constitutionality, under state constitutional provision forbidding financial aid to religious sects, of public provision of schoolbus service for private school pupils, 41 A.L.R.3d 344.

Free transportation: nature and extent of transportation that must be furnished under statute requiring free transportation of school pupils, 52 A.L.R.3d 1036.

**22-8-27. Transportation equipment.**

A. The department shall establish a systematic program for the purchase of necessary school bus transportation equipment.

B. In establishing a system for the replacement of school-district-owned buses, the department shall provide for the replacement of school buses on a twelve-year cycle. School districts requiring additional buses to accommodate growth in the school district or to meet other special needs may petition the department for additional buses. Under exceptional circumstances, school districts may also petition the department for permission to replace buses prior to the completion of a twelve-year cycle or to use buses in excess of twelve years contingent upon satisfactory annual safety inspections.

C. In establishing a system for the use of contractor-owned buses by school districts or state-chartered charter schools, the department shall establish a schedule for the payment of rental fees for the use of contractor-owned buses. The department shall establish procedures to ensure the systematic replacement of buses on a twelve-year replacement cycle. School districts requiring additional buses to accommodate growth in the school district or to meet other special needs may petition the department for additional buses. Under exceptional circumstances, school districts may also petition the department for permission to replace buses prior to the completion of a twelve-year cycle or to use buses in excess of twelve years contingent upon satisfactory annual safety inspections.

D. The school district shall file a lien on every contractor-owned school bus under the contract on which the contractor owes money, which lien shall have priority second only to a lien securing the purchase-money obligation. The school district shall perfect its lien on each contractor-owned school bus by filing the lien with the motor vehicle division of the taxation and revenue department. The lien shall be recorded on the title of the school bus. A school bus contractor shall not refinance or use a school bus on which a school district has a lien as collateral for any other loan without prior written permission of the department. A school bus lien shall be collected and enforced as provided in Chapter 55, Article 9 NMSA 1978. The school district shall release its lien on a school bus:

- (1) when the department authorizes a replacement of the school bus; or
- (2) when the contractor has reimbursed the school district the amount calculated pursuant to Subsection E of this section if the school bus service contract is terminated or not renewed and the contractor owes the school district as provided in that subsection.

E. No school district shall pay rental fees for any one bus for a period in excess of five years. In the event a school bus service contract is terminated or not renewed by either party, the department shall calculate the remaining number of years that a bus could be used based on a twelve-year replacement cycle and calculate a value reflecting that use. The school district shall deduct an amount equal to that value from any remaining amount due on the contract, or if no

balance remains on the contract, the contractor shall reimburse the school district an amount equal to the value calculated.

F. If the school district fails to take action to collect money owed to it when a school bus contract is terminated or not renewed, the department may deduct the amount from the school district's transportation distribution.

History: 1953 Comp., § 77-6-23, enacted by Laws 1967, ch. 16, § 77; 1988, ch. 64, § 32; 1993, ch. 226, § 24; 1995, ch. 208, § 2; 2006, ch. 94, § 18; 2009, ch. 92, § 1.

**Cross references.** — For transfer of powers and duties of former state superintendent to secretary of public education, see 9-24-15 NMSA 1978.

**The 2009 amendment**, effective June 19, 2009, added Subsection D; in Subsection E, after "is terminated", added "or not renewed by either party"; and added Subsection F.

**Applicability.** — Laws 2009, ch. 92, § 3 provided that the provisions of Laws 2009, ch. 92, §§ 1 and 2 apply to contracts, including contract renewals, entered into on or after June 19, 2009.

**The 2006 amendment**, effective July 1, 2007, changed "state superintendent" to "department" in Subsections A through C; and added state-chartered charter school in Subsection C.

**The 1995 amendment**, effective July 1, 1995, deleted "Local school boards may, with the approval of the state transportation director and" from the beginning of the section, designated the existing provisions as Subsection A, inserted "shall" in Subsection A, deleted "from the annual budget allocation for school transportation within the school district" from the end of Subsection A, and added Subsections B and C.

**The 1993 amendment**, effective July 1, 1993, rewrote the catchline, which formerly read "Transportation of students; additional budget allowance; purchase of equipment"; deleted former Subsections A and B, pertaining to authorization for an additional budget allowance for the cost of transporting students where special equipment is necessary or where special physical conditions exist; and deleted the subsection designation "C".

**The 1988 amendment**, effective May 18, 1988, substituted "state superintendent" for "chief" in Subsection C.

## ANNOTATIONS

**Reimbursement of rental fees.** — A local school district is entitled to reimbursement from a school bus operator of unearned rental fees paid to the operator for bus purchases at the termination of the school bus service contract without distinction as to the reason for or the time of termination of the contract. *Gladden Motor Co., Inc. v. Eunice Sch. Bd.*, 2007-NMCA-118, 142 N.M. 483, 167 P.3d 931, cert. denied, 2007-NMCERT-009, 142 N.M. 715, 169 P.3d 408.

### 22-8-28. Repealed.

**Repeals.** — Laws 1995, ch. 208, § 16 repealed 22-8-28 NMSA 1978, as amended by Laws 1979, ch. 305, § 3, relating to the submission of school bus cost reports, effective July 1, 1995. For provisions of former section, see the 1994 NMSA 1978 on *NMONESOURCE.COM*.

**22-8-29. Transportation distributions; reports; payments.**

A. Prior to November 15 of each year, each local school board of a school district and governing body of a state-chartered charter school shall report to the state transportation director, upon forms furnished by the state transportation director, the following information concerning the school district's or state-chartered charter school's operation on the first reporting date of the current year:

- (1) the number and designation of school bus routes in operation in the school district;
- (2) the number of miles traveled by each school bus on each school bus route, showing the route mileage in accordance with the type of road surface traveled;
- (3) the number of students transported on the first reporting date of the current year and adjusted for special education students on December 1;
- (4) the projected number of students to be transported in the next school year;
- (5) the seating capacity, age and mileage of each bus used in the school district for student transportation; and
- (6) the number of total miles traveled for each school district's or state-chartered charter school's per capita feeder routes.

B. Each local school board of a school district and governing body of a state-chartered charter school maintaining a school bus route shall make further reports to the state transportation director at other times specified by the state transportation director.

C. The state transportation director shall certify to the secretary that the allocations from the transportation distributions to each school district and state-chartered charter school are based upon the transportation distribution formula established in the Public School Code [Chapter 22 [except Article 5A] NMSA 1978]. The allocations for the first six months of a school year shall be based upon the tentative transportation budget of the school district or state-chartered charter school for the current fiscal year. Allocations to a school district or state-chartered charter school for the remainder of the school year shall adjust the amount received by the school district or state-chartered charter school so that it equals the amount the school district or state-chartered charter school is entitled to receive for the entire school year based upon the November 15 report and subject to audit and verification.

D. The department shall make periodic installment payments to school districts and state-chartered charter schools during the school year from the transportation distributions, based upon the allocations certified by the state transportation director.

History: 1953 Comp., § 77-6-24, enacted by Laws 1967, ch. 16, § 78; 1974, ch. 73, § 2; 1978, ch. 127, § 5; 1979, ch. 305, § 4; 1988, ch. 64, § 33; 1995, ch. 208, § 3; 1999 (1st S.S.), ch. 11, § 2; 2006, ch. 94, § 19; 2010, ch. 116, § 7.

**Repeals.** — Laws 2001, ch. 350, § 2, repealed Laws 1999 (1st S.S.), ch. 11, § 7, effective June 15, 2001, which would have repealed 22-8-29 on July 1, 2001.

**Cross references.** — For transportation of students generally, see 22-16-1 NMSA 1978 et seq.

For transfer of powers and duties of the former state superintendent, see 9-24-15 NMSA 1978.

For the program support and student transportation division of the public education department, see 9-24-4 NMSA 1978.

**The 2010 amendment**, effective May 19, 2010, in Subsection A, in the introductory sentence after "operation on the", deleted "fortieth day of school" and added "first reporting date of the current year"; and in Subsection A(3), after "transported on the", deleted "fortieth day of school" and added "first reporting date of the current year".

**Temporary provisions.** — Laws 2010, ch. 116, § 9 provided that references in the Public School Code pertaining to the fortieth-day or forty-day report of public school membership or enrollment shall be deemed to be references to the first reporting date, which is the second Wednesday in October; references pertaining to the eightieth-day or eighty-day report of public school membership or enrollment shall be deemed to be references to the second reporting date, which is the second Wednesday in December; and references pertaining to the one-hundred twentieth-day or one-hundred twenty-day report of public school membership or enrollment shall be deemed to be references to the third reporting date, which is the second Wednesday in February.

As the public schools transition from former reporting dates to new reporting dates, the public education department may use any combination of former and new reporting dates as necessary to develop membership and cost projections and budgets for the 2010-2011 school year.

**The 2006 amendment**, effective July 1, 2007, added the governing body of a state-chartered charter school in Subsections A and B and added state-chartered schools in Subsection A, Paragraph (6) of Subsection A, and in Subsections C and D.

**The 1999 amendment**, effective May 21, 1999, in Subsection A added "and adjusted for special education students on December 1" at the end of Paragraph (3), deleted former Paragraph (5), which read "the percentage of unpaved or unimproved roads utilized by school buses in the school district; and" and redesignated the subsequent paragraph accordingly, substituted "used" for "utilized" in Paragraph (5), and added Paragraph (6).

**The 1995 amendment**, effective July 1, 1995, in Subsection A, in the introductory paragraph, deleted "maintaining a school bus route" following "school district" and substituted "the district's operation on the fortieth day of school" for "the school year to and including October 30", deleted "which have been approved by the state transportation director" from the end of Paragraph (1), deleted former Paragraph (2) relating to the number and capacity of the buses operating on the district, redesignated former Paragraphs (3) and (4) as Paragraphs (2) and (3), substituted "on the fortieth day of school" for "on each school bus route" in Paragraph (3), and added Paragraphs (4) to (6); deleted "concerning the information required by this section" following the first "director" in Subsection B, and rewrote Subsection C.

**The 1988 amendment**, effective May 18, 1988, deleted the last sentence of Subsection B regarding required periods for reporting; in Subsection C, substituted "state superintendent" for "director" near the beginning of the first sentence and "state superintendent" for "director of the public school finance division" at the end of the first sentence; and substituted "department" for "director" and deleted "to him"

following "certified" in Subsection D.

### **22-8-29.1. Calculation of transportation allocation.**

A. As used in this section:

(1) "annual variables" means the coefficients calculated by regressing the total operational expenditures from two years prior to the current school year for each school district and state-chartered charter school using the number of students transported and the numerical value of site characteristics;

(2) "base amount" means the fixed amount that is the same for all school districts and an amount established by rule for state-chartered charter schools;

(3) "total operational expenditures" means the sum of all to-and-from school transportation expenditures, excluding expenditures incurred in accordance with the provisions of Section 22-8-27 NMSA 1978; and

(4) "variable amount" means the sum of the product of the annual variables multiplied by each school district's or state-chartered charter school's numerical value of the school district's and state-chartered charter school's site characteristics multiplied by the number of days of operation for each school district or state-chartered charter school.

B. The department shall calculate the transportation allocation for each school district and state-chartered charter school.

C. The base amount is designated as product A. Product A is the constant calculated by regressing the total operations expenditures from the two years prior to the current school year for school district or state-chartered charter school operations using the numerical value of site characteristics approved by the department. The legislative education study committee and the legislative finance committee may review the site characteristics developed by the state transportation director prior to approval by the department.

D. The variable amount is designated as product B. Product B is the predicted additional expenditures for each school district or state-chartered charter school based on the regression analysis using the site characteristics as predictor variables multiplied by the number of days.

E. The allocation to each school district and state-chartered charter school shall be equal to product A plus product B.

F. For the 2001-2002, 2002-2003 and 2003-2004 school years, the transportation allocation for each school district shall not be less than ninety-five percent or more than one hundred five percent of the prior school year's transportation expenditure.

G. The adjustment factor shall be applied to the allocation amount determined pursuant to Subsections E and F of this section.

History: Laws 1995, ch. 208, § 10; 1999 (1st S.S.), ch. 11, § 3; 2001, ch. 350, § 1; 2006, ch. 94, § 20.

**Cross references.** — For the legislative education study committee, see 2-10-1 NMSa 1978.

For the legislative finance committee, see 2-5-1 NMSA 1978.

For references to the former state board, see 9-24-15 NMSA 1978.

For the program support and student transportation division of the department, see 9-24-4 NMSA 1978.

**The 2006 amendment**, effective July 1, 2007, added state-chartered charter schools in Paragraphs (1) and (4) of Subsection A and Subsections B through E; and added an amount established by rule for state-chartered charter schools in Paragraph (2) of Subsection A.

**The 2001 amendment**, effective June 15, 2001, in Subsection F, deleted "1999-2000, 2000-2001 and", inserted "2002-2003 and 2003-2004" substituted "ninety-five percent" for "one hundred percent" and "one hundred five percent" for "one hundred fifteen percent", and substituted "prior" for "1998-1999".

**The 1999 amendment**, effective May 21, 1999, added present Subsections A, C through E, and G and redesignated subsequent subsections accordingly; in Subsection B deleted "in the following manner" from the end of the introductory language and deleted Paragraphs (1) through (7), which set out the manner for calculating the transportation allocation for each school district; deleted former Subsection C, relating to determination of the transportation allocation by districts transporting less than 75 students; and in Subsection F substituted "1999-2000, 2000-2001 and 2001-2002 school years" for "1997-98, 1998-99 and 1999-2000 school years", "one hundred percent" for "ninety-five percent", "of the 1998-1999" for "of the 1996-97", and "expenditure" for "allocation".

### **22-8-29.2. Repealed.**

**Repeals.** — Laws 1999 (1st S.S.), ch. 11, § 6 repealed 22-8-29.2 NMSA 1978, as enacted by Laws 1995, ch. 208, § 11, relating to grouping of districts, calculation of average square miles served per student transported, and calculation of average operational expenditure per student, effective May 21, 1999. For provisions of former section, see the 1998 NMSA 1978 on *NMONESOURCE.COM*.

### **22-8-29.3. Repealed.**

**Repeals.** — Laws 1999 (1st S.S.), ch. 11, § 6 repealed 22-8-29.3 NMSA 1978, as enacted by Laws 1995, ch. 208, § 12, relating to the calculation of average operational expenditure per student, effective May 21, 1999. For provisions of former section, see the 1998 NMSA 1978 on *NMONESOURCE.COM*.

### **22-8-29.4. Transportation distribution adjustment factor.**

A. The department shall establish a transportation distribution adjustment factor. The adjustment factor shall be calculated as follows:

(1) calculate the unadjusted transportation allocation for each school district and state-chartered charter school, designated in Section 22-8-29.1 NMSA 1978 as product A plus product B;

(2) the sum total of product A plus product B in all school districts and state-chartered charter schools added together equals product C; and

(3) subtract product C from the total operational transportation distribution for the current year and divide the result by product C and then add 1 in the following manner: " $[(\text{total operational transportation distribution} - C) \div C] + 1$ ". The result is the transportation distribution adjustment factor.

B. As used in this section, "total operational transportation distribution" means the total legislative appropriation for the transportation distribution minus amounts included for capital outlay expenses.

History: Laws 1995, ch. 208, § 13; 1999 (1st S.S.), ch. 11, § 4; 2006, ch. 94, § 21.

**Cross references.** — For transfer of powers and duties of former state superintendent, see 9-24-15 NMSA 1978.

For the public education department, see 9-24-4 NMSA 1978.

**The 2006 amendment**, effective July 1, 2007, changed "state superintendent" to "department" in Subsection A; added state-chartered charter schools in Paragraphs (1) and (2) of Subsection A; and added the reference to Section 22-8-29.1 NMSA 1978 in Paragraph (1) of Subsection A.

**The 1999 amendment**, effective May 21, 1999, in Subsection A, in Paragraphs (1) and (2), inserted "product A plus product" and "school", and in Paragraphs (2) and (3), inserted "product" preceding "C".

#### **22-8-29.5. Repealed.**

**Repeals.** — Laws 1999 (1st S.S.), ch. 11, § 6 repealed 22-8-29.5 NMSA 1978, as enacted by Laws 1995, ch. 208, § 14, relating to calculation of a mileage supplement for each local school district, effective May 21, 1999. For provisions of former section, see the 1998 NMSA 1978 on *NMONESOURCE.COM*.

#### **22-8-29.6. Transportation emergency fund.**

A. The "transportation emergency fund" is created in the state treasury. Money in the fund shall not revert to the general fund at the end of any fiscal year. Money in the fund is appropriated to the department for the purpose of funding transportation emergencies, including fuel price increases. The secretary shall make distributions to ensure the safety of students receiving to-and-from transportation services.

B. The secretary shall account for all transportation emergency distributions and shall make full reports to the governor, the legislative education study committee and the legislative finance committee of payments made.

**History:** Laws 1995, ch. 208, § 15; 1999 (1st S.S.), ch. 11, § 5; 2014, ch. 23, § 1.

**The 2014 amendment**, effective May 21, 2014, permitted fuel price increases to be deemed a

transportation emergency; and in Subsection A, in the third sentence, after "funding transportation emergencies", added "including fuel price increases, in the fourth sentence, at the beginning of the sentence, after "The", deleted "state superintendent" and added "secretary", and after "shall make distributions", deleted "only"; and in Subsection B, after "The", deleted "state superintendent" and added "secretary".

The 1999 amendment, effective May 21, 1999, rewrote this section to the extent that a detailed comparison would be impracticable.

### **22-8-30. Supplemental distributions.**

A. The department shall make supplemental distributions only for the following purposes:

(1) to pay the out-of-state tuition of students subject to the Compulsory School Attendance Law [Chapter 22, Article 12 NMSA 1978] who are attending school out-of-state because school facilities are not reasonably available in the school district of their residence;

(2) to make emergency distributions to school districts or state-chartered charter schools in financial need, but no money shall be distributed to any school district or state-chartered charter school having cash and invested reserves, or other resources or any combination thereof, equaling five percent or more of the school district's or state-chartered charter school's operational budget;

(3) to make program enrichment distributions in the amount of actual program expense to school districts and state-chartered charter schools for the purpose of providing specific programs to meet particular educational requirements that cannot otherwise be financed;

(4) a special vocational education distribution to area vocational schools or state-supported schools with department-approved vocational programs to reimburse those schools for the cost of vocational education programs for those students subject to the Compulsory School Attendance Law who are enrolled in such programs; and

(5) to make emergency capital outlay distributions to school districts or state-chartered charter schools that have experienced an unexpected capital outlay emergency demanding immediate attention.

B. The department shall account for all supplemental distributions and shall make full reports to the governor, legislative education study committee and legislative finance committee of payments made as authorized in Subsection A of this section.

C. The department may divert any unused or unneeded balances in any of the distributions made under the supplementary distribution authority to make any other distribution made pursuant to the same authority.

History: 1953 Comp., § 77-6-29, enacted by Laws 1967, ch. 16, § 83; 1969, ch. 180, § 22; 1971, ch. 263, § 12; reenacted by 1974, ch. 8, § 17; 1978, ch. 148, § 1; 1988, ch. 64, § 34; 2006, ch. 94, § 22.

**Cross references.** — For references to the former state superintendent, see 9-24-15 NMSA 1978.

For the public education department, see 9-24-4 NMSA 1978.

**The 2006 amendment**, effective July 1, 2007, changed "state superintendent" to "department" in Subsections A through C; added state-chartered charter schools in Paragraphs (2), (3) and (5) of Subsection A; changes "state board" to "department" in Paragraph (4) of Subsection A.

**The 1988 amendment**, effective May 18, 1988, substituted "state superintendent" for "director" in Subsections A and C; deleted "with the approval of the state superintendent" at the beginning of Subsections A(3), (4) and (5); in Subsection B, deleted "and director" following "state superintendent" and substituted "legislative education study committee" for "legislative school study committee"; and deleted "directors" preceding "supplementary distribution authority" in Subsection C.

### **22-8-30.1. Recompiled.**

**Recompilation.** — Laws 2004, ch. 27, § 28 recompiled former 22-8-30.1 NMSA 1978, relating to creation of adult basic education fund, as 21-1-27.5 NMSA 1978, effective May 19, 2004.

### **22-8-30.2. Recompiled.**

**Recompilation.** — Laws 2004, ch. 27, § 28 recompiled former 22-8-30.2 NMSA 1978, relating to distribution of adult basic education fund, as 21-1-27.6 NMSA 1978, effective May 19, 2004.

### **22-8-31. State-support reserve fund.**

A. The "state-support reserve fund" is created.

B. The state-support reserve fund shall be used only to augment the appropriations for the state equalization guarantee distribution in order to ensure, to the extent of the amount undistributed in the fund, that the maximum figures for such distribution established by law shall not be reduced.

C. The undistributed money in the state-support reserve fund shall be invested by the state treasurer in interest-bearing securities of the United States government or in certificates of deposit in qualified banks, and in savings and loans [loan] associations whose deposits are insured with an agency of the United States. The state treasurer may deposit money from the state-support reserve fund or any other fund in one or more accounts with any such bank or federally insured savings and loan association but the state treasurer, in any official capacity, shall not deposit money from said fund or any other fund in any one such federally insured savings and loan association the aggregate of which would exceed the amount of federal savings and loan insurance corporation insurance for a single public account. Income from these investments shall be periodically credited to the general fund.

D. At least forty-five days before the money is needed, the chief [secretary] shall notify the

state treasurer in writing of the amount that will be needed for distribution.

E. In the event that local or federal revenues as defined in Section 22-8-25 NMSA 1978 are received after May 31 of the fiscal year for which the state equalization guarantee distribution is being computed and it is therefore necessary to use money from the state support reserve fund to augment the appropriation for the state equalization guarantee distribution, the chief [director], upon receipt by the school district of the delayed local or federal revenues, shall deduct the appropriate amount from the current state equalization guarantee distribution to that school district and reimburse the state-support reserve fund in the amount of the deduction.

F. It is the intent of the legislature that the fund be reimbursed in the amount of the yearly distribution by appropriation in the year following the distribution so that the fund at the beginning of each fiscal year shall have a credit balance of at least ten million dollars (\$10,000,000).

G. Distribution from this fund shall be made in the same manner and on the same basis as the state equalization guarantee distribution.

**History:** 1953 Comp., § 77-6-30, enacted by Laws 1967, ch. 16, § 84; 1968, ch. 18, § 10; 1969, ch. 180, § 23; 1974, ch. 8, § 18; 1975, ch. 157, § 8; 1976 (S.S.), ch. 32, § 9.

**Compiler's notes.** — The public school finance division of the department of finance and administration was abolished by Laws 1977, ch. 246, § 69. Laws 1977, ch. 246, § 3, established the public school finance division of the educational finance and cultural affairs department. Laws 1977, ch. 246, § 63, compiled as 22-8-3 NMSA 1978, designated the administrative and executive head of the public school finance division of the educational finance and cultural affairs department as the director of public school finance.

**Cross references.** — For reference to the former chief of public school finance, see 9-6-3.1 and 9-24-15 NMSA 1978 and reorganization notes.

For secretary of public education, see 9-24-5 NMSA 1978.

For state equalization guarantee distribution generally, see 22-8-25 NMSA 1978.

### **22-8-32. Current school fund; receipts; disposition.**

A. As they are received, the state treasurer shall deposit into the current school fund revenue received from the following sources:

- (1) all fines and forfeitures collected under general laws;
- (2) the net proceeds of property that may come to the state by escheat; and
- (3) all other revenue which by law is to be credited to the current school fund.

B. At the end of each month, the state treasurer shall transfer the amount in the common school current fund, also known as the common school income fund, to the current school fund.

C. At the end of each month, after the transfer authorized in Subsection B of this section, the

state treasurer shall transfer any unencumbered balance in the current school fund to the public school fund.

**History:** 1953 Comp., § 77-6-32, enacted by Laws 1967, ch. 16, § 86; 1972, ch. 90, § 2; 1976, ch. 7, § 1.

**Cross references.** — For public school fund generally, see 22-8-14 NMSA 1978.

### **22-8-33. Distribution of certain revenue.**

There shall be distributed to the credit of each school district in a county, according to the proportion that the forty-day average daily membership of the school district bears to the forty-day average daily membership of the entire county, all revenue received by the county for public school purposes from the forest reserve funds distributed pursuant to Section 6-11-3 NMSA 1978.

**History:** 1953 Comp., § 77-6-35, enacted by Laws 1967, ch. 16, § 89; 1969, ch. 180, § 24; 1972, ch. 90, § 3; 1985 (1st S.S.), ch. 15, § 18.

### **22-8-34. Federal mineral leasing funds.**

A. Except for an annual appropriation to the instructional material fund and to the bureau of geology and mineral resources of the New Mexico institute of mining and technology, and except as provided in Subsection B of this section, all other money received by the state pursuant to the provisions of the federal Mineral Lands Leasing Act, 30 USCA 181, et seq., shall be distributed to the public school fund.

B. All money received by the state as its share of a prepayment of royalties pursuant to 30 U.S.C. 1726(b) shall be distributed as follows:

(1) a portion of the receipts, estimated by the taxation and revenue department to be equal to the amount that the state would have received as its share of royalties in the same fiscal year if the prepayment had not been made, shall be distributed to the public school fund; and

(2) the remainder shall be distributed to the common school permanent fund.

**History:** 1953 Comp., § 77-6-36, enacted by Laws 1967, ch. 16, § 90; 1974, ch. 8, § 19; 1999, ch. 43, § 1; 1999, ch. 253, § 1; 2001, ch. 246, § 2.

**Cross references.** — For public school fund generally, see 22-8-14 NMSA 1978.

For instructional material fund generally, see 22-15-5 NMSA 1978 et seq.

For New Mexico institute of mining and technology generally, see 21-11-1 NMSA 1978 et seq.

**The 2001 amendment**, effective June 15, 2001, substituted "bureau of geology" for "bureau of mines" in Subsection A.

The 1999 amendment, effective June 18, 1999, rewrote the former section.

## ANNOTATIONS

**Law reviews.** — For article, " 'New Mexican Nationalism' and the Evolution of Energy Policy in New Mexico," see 17 Nat. Resources J. 283 (1977).

### **22-8-35. Tax anticipation certificates.**

A. For operating expenses, a local school board with the consent of the chief [secretary] may anticipate the collection of taxes for which tax levies have been made by issuing and selling certificates of indebtedness. These certificates shall be issued on the faith and credit of the school district issuing the certificates. The certificates shall not bear interest in excess of six percent a year. The total unpaid certificates outstanding shall not exceed the budget allowance for operating expenses of the school district for a period of ninety days. The certificates shall be paid out of the money first credited thereafter to the operating fund of the school district.

B. For school building construction, repair or both, a local school board with consent of the chief [secretary] may anticipate the collection of taxes for which tax levies have been made for that purpose by issuing and selling certificates of indebtedness. These certificates shall be issued on the faith and credit of the school district issuing the certificates. The certificates shall not bear interest in excess of six percent a year. The certificates shall be paid out of the money first received under the tax levy.

**History:** 1953 Comp., § 77-6-39, enacted by Laws 1967, ch. 16, § 93.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**Cross references.** — For transfer of powers of the former chief of public school finance to the state superintendent, and from the state superintendent to the secretary of public education, see 9-6-3.1 and 9-24-15 NMSA 1978.

For general obligation bonds of school districts, see 22-18-1 NMSA 1978 et seq.

For school revenue bonds, see 22-19-1 NMSA 1978 et seq.

For public school emergency capital outlays, see 22-24-1 NMSA 1978 et seq.

For public school capital improvements, see 22-25-1 NMSA 1978 et seq.

### **22-8-36. Certification of allocations; fund accounts.**

The chief [secretary] shall certify periodically to each county treasurer the allocations of funds to each school district in the county. The chief [secretary] shall certify to the county

treasurer the names and purposes of the separate funds the county treasurer shall establish and maintain for each school district.

**History:** 1953 Comp., § 77-6-40, enacted by Laws 1967, ch. 16, § 94.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

For transfer of powers of the former chief of public school finance to the state superintendent, and from the state superintendent to the secretary of public education, see 9-6-3.1 and 9-24-15 NMSA 1978.

### **22-8-37. Public school funds.**

Except for money received for a cafeteria or for an activity fund, all money for public school purposes distributed to a school district, or collected by a county, school district or public school authorities for a school district, shall be delivered to and kept by a county treasurer or a board of finance of a school district in funds approved by the division. Disbursements from these funds shall only be made for matured debts by voucher and warrants or checks of the local school board. In no event shall any money be expended or debts incurred except as authorized by the Public School Finance Act. Money for a cafeteria or for an activity fund shall be deposited in a bank, or in a savings and loan association whose deposits are insured by an agency of the United States, or may be deposited in a credit union, as long as the credit union deposit is insured by an agency of the United States, approved by the local school board. The local school board may deposit any cafeteria funds, any activity funds or any other funds in one or more accounts with any such bank or insured savings and loan association in its county, but no local school board, in any official capacity, shall deposit any cafeteria funds, any activity funds or any other funds in any one such savings and loan association the aggregate of which would exceed the amount of federal savings and loan insurance corporation insurance for a single public account. As used in this section, "deposit" includes share, share certificate and share draft.

**History:** 1953 Comp., § 77-6-41, enacted by Laws 1967, ch. 16, § 95; 1968, ch. 18, § 11; 1975, ch. 157, § 9; 1978, ch. 128, § 7; 1987, ch. 79, § 22.

## **ANNOTATIONS**

**Disposition of school revenue.** — If local school board has not been designated a board of finance, the county treasurer is to keep all school revenue. 1967 Op. Att'y Gen. No. 67-144.

### **22-8-38. Boards of finance; designation.**

A. Upon written application to and approval of the department, a local school board may be designated a board of finance for public school funds of the school district. A local school board designated as a board of finance may require all funds distributed to, allocated to or collected for

the school district or the public schools under its jurisdiction to be deposited with it. The department shall designate a local school board as a board of finance if:

- (1) the local school board shows to the satisfaction of the department that it has personnel properly trained to keep accurate and complete fiscal records;
- (2) the local school board agrees to consult with the department on any matters not covered by the manual of accounting and budgeting before taking any action relating to funds held by it as a board of finance;
- (3) the persons handling these funds are adequately bonded to protect the funds entrusted to them from loss; and
- (4) the local school board making application has not been suspended and not reinstated as a board of finance within the past year.

B. A charter school applicant requesting a charter from the commission shall submit a plan detailing how its governing body will qualify for designation as a board of finance for public school funds of the charter school. The governing body of a proposed state-chartered charter school shall qualify as a board of finance before the first year of operation of the charter school. The governing body of a state-chartered charter school designated as a board of finance may require all funds distributed to, allocated to or collected for the state-chartered charter school to be deposited with the governing body. The commission shall designate the governing body of a state-chartered charter school as a board of finance if:

- (1) the governing body shows to the satisfaction of the commission that it has personnel properly trained to keep accurate and complete fiscal records;
- (2) the governing body agrees to consult with the division on any matters not covered by the manual of accounting and budgeting before taking any action relating to funds held by it as a board of finance;
- (3) the persons handling these funds are adequately bonded to protect the funds entrusted to them from loss; and
- (4) the governing body was not a governing body of a charter school or does not have a member who was a member of a governing body of a charter school that was suspended and not reinstated as a board of finance.

C. Failure of the governing body of a proposed state-chartered charter school to qualify for designation as a board of finance constitutes good and just grounds for denial, nonrenewal or revocation of its charter.

History: 1953 Comp., § 77-6-42, enacted by Laws 1967, ch. 16, § 96; 1988, ch. 64, § 35; 2006, ch. 94, § 23.

**The 2006 amendment**, effective July 1, 2007, changed "state superintendent" to "department" in Subsection A and in Paragraphs (1) and (2) of Subsection A; added Subsection B to provide for the designation of boards of finance for charter schools and state-chartered charter schools and the criteria

for designation of the governing body of a state-chartered charter school as a board of finance; and added Subsection C to provide that failure of a governing body of a state-chartered charter school to qualify as a board of finance is grounds for denial, nonrenewal or revocation of its charter.

**The 1988 amendment**, effective May 18, 1988, substituted "state superintendent" for "chief" throughout the section; deleted "of the division" following "manual of accounting and budgeting" in Subsection B; and made a minor stylistic change in Subsection C.

### **22-8-39. Boards of finance; suspension.**

The department may at any time suspend a local school board or governing body of a state-chartered charter school from acting as a board of finance if the department reasonably believes there is mismanagement, improper recording or improper reporting of public school funds under the local school board's or governing body of a state-chartered charter school's control. When a local school board or governing body of a state-chartered charter school is suspended from acting as a board of finance, the department shall:

A. immediately take control of all public school funds under the control of the local school board or governing body of a state-chartered charter school acting as a board of finance;

B. immediately have an audit made of all funds under the control of the local school board or governing body of a state-chartered charter school acting as a board of finance and charge the cost of the audit to the school district or state-chartered charter school;

C. act as a fiscal agent for the school district or state-chartered charter school and take any action necessary to conform the fiscal management of funds of the school district or state-chartered charter school to the requirements of law and good accounting practices;

D. report any violations of the law to the proper law enforcement officers;

E. act as fiscal agent for the school district or state-chartered charter school until the department determines that the local school board or governing body of a state-chartered charter school is capable of acting as a board of finance or until the department determines that the county treasurer should act as fiscal agent for the school district or state-chartered charter school;

F. inform the local school board or governing body of a state-chartered charter school in writing of the department's determination as to who is to act as board of finance or fiscal agent for the school district or state-chartered charter school and also inform the county treasurer in writing if it determines that the county treasurer should act as fiscal agent for the school district or state-chartered charter school; and

G. consider commencing proceedings before the commission to suspend, revoke or refuse to renew the charter of the state-chartered charter school in the case of a state-chartered charter school that has engaged in serious or repeated mismanagement, improper recording or improper reporting of public school funds under its control.

History: 1953 Comp., § 77-6-43, enacted by Laws 1967, ch. 16, § 97; 1988, ch. 64, § 36; 2006, ch. 94, § 24.

**Cross references.** — For transfer of powers and duties of the former state superintendent to the secretary of public education, see 9-24-15 NMSA 1978.

**The 2006 amendment**, effective July 1, 2007, changed "state superintendent" to "department" and added the governing body of a state-chartered charter school; and added Subsection G to provide for proceedings to suspend, revoke or refuse to renew a charter of a state-chartered charter school in cases of mismanagement or improper recording or reporting of school funds.

**The 1988 amendment**, effective May 18, 1988, substituted "state superintendent" for "chief" twice in the introductory paragraph and made a minor stylistic change.

## **22-8-40. Deposit of public school funds; distribution; interest.**

A. All public money in the custody of school districts or state-chartered charter schools that have been designated as boards of finance shall be deposited in qualified depositories in accordance with the terms of this section.

B. Deposits of funds of the school district or state-chartered charter school may be made in noninterest-bearing checking accounts in one or more banks, savings and loan associations or credit unions, as long as the credit union deposits are insured by an agency of the United States, located within the geographical limits of the school district.

C. Deposits of funds of the school district or state-chartered charter school may be made in interest-bearing checking accounts, commonly known as "NOW" accounts, in one or more banks, savings and loan associations or credit unions, as long as the credit union deposits are insured by an agency of the United States, located within the geographical limits of the school district.

D. Public money placed in interest-bearing deposits; in banks and savings and loan associations, other than interest-bearing checking accounts as defined in Subsection C of this section, shall be equitably distributed among all banks and savings and loan associations having their main or manned branch offices within the geographical boundaries of the school district that have qualified as public depositories by reason of insurance of the account by an agency of the United States or by depositing collateral security or by giving bond as provided by law in the proportion that each such bank's or savings and loan association's net worth bears to the total net worth of all banks and savings and loan associations having their main office or a manned branch office within the geographical boundaries of the school district. The net worth of the main office of a savings and loan association and its manned branch offices within the geographical boundaries of a school district is the total net worth of the association multiplied by the percentage that deposits of the main office and the manned branch offices located within the geographical boundaries of the school district are of the total deposits of the association. The net worth of each manned branch office or aggregate of manned branch offices of a savings and loan association located outside the geographical boundaries of the school district in which the main office is located is the total net worth of the association multiplied by the percentage that deposits of the branch or aggregate of branches located outside the geographical boundaries of the school

district in which the main office is located are of the total deposits of the association. The director of the financial institutions division of the regulation and licensing department shall promulgate a formula for determining the net worth of banks' main offices and branches for the purposes of distribution of public money as provided for by this section. "Net worth" means assets less liabilities as reported by such banks and savings and loan associations on their most recent semiannual reports to the state or federal supervisory authority having jurisdiction.

E. Notwithstanding the provisions of Subsection D of this section, public money may be placed in interest-bearing deposits, other than interest-bearing checking accounts as defined in Subsection C of this section, at the discretion of the board of finance, in credit unions having their main or manned branch offices within the geographical boundaries of the school district to the extent such deposits are insured by an agency of the United States.

F. The rate of interest for all public money deposited in interest-bearing accounts in banks, savings and loan associations and credit unions shall be set by the state board of finance, but in no case shall the rate of interest be less than one hundred percent of the asked price on United States treasury bills of the same maturity on the date of deposit. Any bank or savings and loan association that fails to pay the minimum rate of interest at the time of deposit provided for herein for any respective deposit forfeits its right to an equitable share of that deposit under this section. If the deposit is part or all of the proceeds of a bond issue and the interest rate prescribed in this subsection materially exceeds the rate of interest of the bonds, the interest rate prescribed by this subsection shall be reduced on the deposit to an amount not materially exceeding the interest rate of the bonds if the bond issue would lose its tax exempt status under Section 103 of the United States Internal Revenue Code of 1954, as amended.

G. Public money in excess of that for which banks and savings and loan associations within the geographical boundaries of the school district have qualified may be deposited in qualified depositories, including credit unions, in other areas within the state under the same requirements for payment of interest as if the money were deposited within the geographical boundaries of the school district.

H. The board of finance of the school district or state-chartered charter school may temporarily invest money held in demand deposits and not immediately needed for the operation of the school district or state-chartered charter school. Such temporary investments shall be made only in securities that are issued by the state or by the United States government, or by their departments or agencies, and that are either direct obligations of the state or the United States or are backed by the full faith and credit of those governments.

I. The department of finance and administration may monitor the deposits of public money by school districts or state-chartered charter schools to assure full compliance with the provisions of this section.

History: 1953 Comp., § 77-6-44, enacted by Laws 1967, ch. 16, § 98; 1968, ch. 18, § 12; 1975, ch. 157, § 10; 1975, ch. 304, § 3; reenacted by 1977, ch. 136, § 2; 1978, ch. 128, § 8; 1980, ch. 151, § 49; 1981, ch. 332, § 18; 1983, ch. 191, § 2; 1987, ch. 79, § 23; 2006, ch. 94, § 25.

**Cross references.** — For state board of finance generally, see 6-1-1 NMSA 1978 et seq.

For the director of the financial institutions division, see 9-16-11 NMSA 1978.

For Section 103 of the Internal Revenue Code, see 26 U.S.C. § 103.

**The 2006 amendment**, effective July 1, 2007, changed "local school boards" to "school districts" in Subsections A through D and I, and added state-chartered charter schools in Subsections A through C and H and I.

**22-8-40.1. Deposit of public school funds; providing exception on interest rate limitation for "NOW" accounts.**

Notwithstanding the provisions of Subsection E of Section 22-8-40 NMSA 1978, the requirement for a rate of interest of not less than one hundred percent of the asked price on United States treasury bills of the same maturity on the day of deposit shall not apply to interest-bearing checking accounts.

**History:** 1978 Comp., § 22-8-40.1, enacted by Laws 1981, ch. 341, § 1.

**22-8-41. Restriction on operational funds; emergency accounts; cash balances.**

A. A school district shall not expend money from its operational fund for the acquisition of a building site or for the construction of a new structure, unless the school district has bonded itself to practical capacity or the secretary determines and certifies to the legislative finance committee that the expending of money from the operational fund for this purpose is necessary for an adequate public educational program and will not unduly hamper the school district's current operations.

B. A school district or charter school may budget out of cash balances carried forward from the previous fiscal year an amount not to exceed five percent of its proposed operational fund expenditures for the ensuing fiscal year as an emergency account. Money in the emergency account shall be used only for unforeseen expenditures incurred after the annual budget was approved and shall not be expended without the prior written approval of the secretary.

C. In addition to the emergency account, school districts or charter schools may also budget operational fund cash balances carried forward from the previous fiscal year for operational expenditures, exclusive of salaries and payroll, upon specific prior approval of the secretary. The secretary shall notify the legislative finance committee in writing of the secretary's approval of such proposed expenditures. For fiscal years 2004 and 2005, with the approval of the secretary, a school district or charter school may budget so much of its operational cash balance as is needed for nonrecurring expenditures, including capital outlay.

**History:** 1953 Comp., § 77-6-45, enacted by Laws 1967, ch. 16, § 99; 1983, ch. 56, § 1; 1985 (1st S.S.), ch. 15, § 19; 1988, ch. 64, § 37; 2003, ch. 155, § 1; 2004, ch. 60, § 1; 2006, ch. 95, § 2;

2007, ch. 122, § 1; 2011, ch. 39, § 1.

**Cross references.** — For the secretary of public education, see 9-24-5 NMSA 1978.

For public school emergency capital outlays, see 22-24-1 NMSA 1978 et seq.

For public school capital improvements, see 22-25-1 NMSA 1978 et seq.

For the legislative finance committee, see 2-5-1 NMSA 1978.

**The 2011 amendment**, effective April 4, 2011, permitted school districts to keep their cash balances for emergency or operational expenditures by eliminating the former limitation on allowable operational cash balances, the reduction of the state equalization guarantee distribution, and the prohibition against budgeting cash balances.

**Applicability.** — Laws 2011, ch. 39, § 2 provided that Laws 2011, ch. 39, § 1 applies to cash balances realized from the appropriations in fiscal year 2011 and subsequent fiscal years.

**The 2007 amendment**, effective June 15, 2007, made cash balance credits proportional to the amount of the excess cash balance.

**The 2006 amendment**, effective March 6, 2006, in Subsection D, deleted the provision at the beginning of the sentence, which provided that notwithstanding the provisions of Subsection G and changed "2006" to "2007"; in Paragraph (1) of Subsection E, changed "nine" to "fifteen"; in Paragraph (2) of Subsection E, changed "seven and one-half" to "twelve"; in Paragraph (3) of Subsection E, added "or more" after ten million dollars; in Paragraph (4) of Subsection E, added "or more" after twenty-five million dollars and changed "four and one-half" to "seven"; in Paragraph (5) of Subsection E, deleted the former provision that provided for fiscal year 2005, two and one-half percent of the budgeted expenditures and for subsequent fiscal years three percent and added five percent; in Paragraphs (1) and (2) of Subsection F, deleted "unrestricted, unreserved operational cash balance and the emergency reserve" and inserted "limit"; and added Subsection I to provide for waiver of the reduction required by Subsection F.

**The 2004 amendment**, effective May 19, 2004, amended Subsections A, B, C, D, E, F, G and H to change "state superintendent" to "secretary" and amended Subsection F to delete in Paragraph (1) "limit calculated pursuant to Subsection E of this section" and insert in its place: "unrestricted, unreserved operational cash balance and the emergency reserve" and to insert "unrestricted, unreserved operational cash balance and the emergency reserve" in two places in Paragraphs (1) and (2).

**The 2003 amendment**, effective April 4, 2003, substituted "A school" for "No school" at the beginning of Subsection A; inserted "or charter school" in the first sentence of Subsections B and C; added the last sentence in Subsection C; and added Subsections D to K.

**The 1988 amendment**, effective May 18, 1988, substituted "state superintendent" for "director" throughout the section.

## **22-8-42. Violation of act; penalties.**

A. Any person violating any provision of the Public School Finance Act is guilty of a petty misdemeanor.

B. Any person diverting or expending any public school money contrary to the approved

budget is, in addition to being subject to any other civil or criminal action, liable along with his sureties to the state for the amount diverted or expended.

C. Any person diverting any public school funds from the purpose for which the funds were raised or acquired, or embezzling public school funds, shall be removed from office by the court imposing the criminal penalty.

D. Any person falsifying any record, account or report required to be kept or filed pursuant to the Public School Finance Act or knowingly using any money budgeted or appropriated for public school use or for any other purposes than that provided in the appropriation or budget is guilty of a petty misdemeanor and shall, in addition to all other civil or criminal penalties, forfeit his office or employment.

E. Legal proceedings for violation of the Public School Finance Act shall be instituted by the state superintendent [secretary].

F. A certified school instructor or certified school administrator guilty of any of the violations provided by this section shall, upon conviction, have his certificate revoked by the state board [department].

G. Nothing in this section shall be interpreted to prevent the enforcement of any provision of the Public School Finance Act by means of mandamus or injunction.

**History:** 1953 Comp., § 77-6-46, enacted by Laws 1967, ch. 16, § 100; 1977, ch. 247, § 204; 1988, ch. 64, § 38.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

Laws 2004, ch. 25, § 27, provided that all references to the superintendent of public instruction shall be deemed references to the secretary of public education and all references to the former state board of education or state department of education shall be deemed references to the public education department. See 9-24-15 NMSA 1978.

**The 1988 amendment,** effective May 18, 1988, substituted "state superintendent" for "secretary of finance and administration" in Subsection E, and, in Subsection F, inserted "certified school" and substituted "revoked" for "cancelled".

## ANNOTATIONS

**One need not be found guilty of felony to forfeit and be disqualified from office** under the New Mexico constitution and Subsection D of this section. *State ex rel. Martinez v. Padilla*, 94 N.M. 431, 612 P.2d 223 (1980).

**Forfeiture of office required for approval of violative expenditures.** — Sale of gasoline to school district vehicles by school board member, purchase of airplane ticket for board member's wife and payment to board member and board member's wife for services not rendered are each a violation of this section and require the forfeiture of office of those members who approved the expenditures. *State ex rel. Martinez v. Padilla*, 94 N.M. 431, 612 P.2d 223 (1980).

### **22-8-43. Public school reading proficiency fund; created.**

The "public school reading proficiency fund" is created in the state treasury. The fund shall consist of appropriations, gifts, grants and donations. The fund shall be administered by the department, and money in the fund is appropriated to the department to distribute awards to public middle, junior and senior high schools that implement innovative, scientifically based reading programs. The department shall develop procedures and rules for the application and award of money from the fund, including criteria upon which to evaluate innovative, scientifically based reading programs. Public schools receiving funds shall show evidence that they are using quality, scientifically based reading research to improve reading proficiency and shall develop individualized reading plans for students who fail to meet grade level reading proficiency standards. Disbursements of the fund shall be made by warrant of the department of finance and administration pursuant to vouchers signed by the secretary or the secretary's authorized representative. Any unexpended or unencumbered balance remaining in the fund at the end of any fiscal year shall not revert but shall remain to the credit of the fund.

History: Laws 2000 (2nd S.S.), ch. 14, § 2; 2001, ch. 289, § 2; 1978 Comp., § 22-2-6.12, amended and recompiled as § 22-8-43 by Laws 2003, ch. 153, § 30; 2007, ch. 307, § 5; 2007, ch. 308, § 5.

**Recompilations.** — Laws 2003, ch. 153, § 30 recompiled former 22-2-6.12 NMSA 1978 as 22-8-43 NMSA 1978, effective April 4, 2003.

**Cross references.** — For transfer of powers and duties of the state superintendent to the secretary of public education, see 9-24-15 NMSA 1978.

**The 2007 amendment,** effective July 1, 2007, authorized the use of the fund for awards to middle, junior and senior high schools. Laws 2007, ch. 307, § 5 and Laws 2007, ch. 308, § 5 enacted identical amendments to this section. The section was set out as amended by Laws 2007, ch. 308, § 5. See 12-1-8 NMSA 1978.

**The 2003 amendment,** effective April 4, 2003, deleted "of education" following "department" twice; substituted "public" for "local" preceding "schools" near the middle of the section; substituted "scientifically based" for "research-based" three times; and substituted "research" for "programs" following "reading" near the middle of the fifth sentence.

**The 2001 amendment,** effective June 15, 2001, substituted "department of education" for "state department of public education" in two places; added the fifth sentence; and substituted "state superintendent" for "superintendent of public instruction" in the sixth sentence.

### **22-8-44. Educator licensure fund; distribution; appropriation.**

A. The "educator licensure fund" is created in the state treasury and shall be administered by the department. The fund shall consist of money collected from application fees for licensure or for renewal of licensure by the department.

B. Subject to legislative appropriation, money in the fund is appropriated to the department for the following purposes:

- (1) to fund the educator background check program;
- (2) to enforce educator ethics requirements; and
- (3) to process applications for licensure or for renewal of licensure, including review of professional development dossiers.

C. Money in the fund and any interest that may accrue to the fund shall not revert at the end of the fiscal year but shall remain to the credit of the fund.

History: Laws 1997, ch. 238, § 6; 1978 Comp., § 22-10-4.1, recompiled and amended as § 22-8-44 by Laws 2003, ch. 153, § 31; 2009, ch. 63, § 1.

**Recompilations.** — Laws 2003, ch. 153, § 31 recompiled former 22-10-4.1 NMSA 1978 as 22-8-44 NMSA 1978, effective April 4, 2003.

**The 2009 amendment,** effective July 1, 2009, in Subsection A, changed "state board" to "department"; in Subsection B, added "Subject to legislative appropriation" and "for the following purposes"; and added Paragraphs (2) and (3) of Subsection B.

**The 2003 amendment,** effective April 4, 2003, substituted "licensure" for "certification" in the catchline; in Subsection A, substituted "licensure" for "certification" three times, deleted "state" preceding "department" near the end of the first sentence, and deleted "of public education" at the end of the first sentence; and in Subsection B, deleted "state" preceding "department" near the beginning and substituted "to fund" for "of public education for the purpose of funding" near the middle.

#### **22-8-45. Teacher professional development fund.**

A. The "teacher professional development fund" is created in the state treasury to provide funding for professional development programs and projects for public school teachers. The fund consists of appropriations, gifts, grants, donations and income from investment of the fund. Money in the fund shall not revert to any other fund at the end of a fiscal year. The fund shall be administered by the department of education [public education department] and money in the fund is appropriated to the department to carry out the purposes of the fund.

B. The department of education [public education department] shall evaluate the success of each professional development program or project funded and report its findings to the legislative education study committee each year.

**History:** Laws 2003, ch. 157, § 1.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

Laws 2004, ch. 25, § 27, provided that all references to the superintendent of public instruction shall be deemed references to the secretary of public education and all references to the former state board of

education or state department of education shall be deemed references to the public education department. See 9-24-15 NMSA 1978.

**Cross references.** — For the public education department, see 9-24-4 NMSA 1978.

**22-8-46. Funding formula study task force created; membership; duties.**

A. The "funding formula study task force" is created. The task force shall function from the date of its appointment until December 15, 2007.

B. The task force is composed of the following members:

(1) three members from the house of representatives and three members from the senate appointed by the New Mexico legislative council;

(2) three members appointed by the governor;

(3) four representatives of public school administrators, including one each from a small district, a growth district, an impact aid district and a mid-sized district. The members shall be appointed by the New Mexico legislative council from a list submitted by the New Mexico superintendents' association;

(4) the president of the New Mexico school board association or the president's designee; and

(5) one representative of a statewide teacher organization appointed by the New Mexico legislative council.

C. Vacancies on the task force shall be filled by appointment by the original appointing authority.

D. Members of the task force are entitled to per diem and mileage as provided in the Per Diem and Mileage Act [10-8-1 through 10-8-8 NMSA 1978] and shall receive no other compensation, perquisite or allowance.

E. Staff for the task force shall be provided by the legislative council service, the legislative education study committee, the legislative finance committee, the public education department and the office of education accountability of the department of finance and administration. Staff shall provide technical assistance to the contractor.

F. The task force shall:

(1) develop a work plan and budget for approval by the New Mexico legislative council;

(2) approve the request for proposals for a contractor to conduct the study of the public school funding formula and select the contractor; and

(3) make recommendations to the legislature and the governor by December 15, 2007.

G. The request for proposals shall request a comprehensive study of the public school funding formula, including the expectations of the public and statutory requirements for New

Mexico's public education system; the costs of those expectations and requirements; and a thorough analysis of all formula components and consideration of possible changes to the formula, including:

- (1) a revised training and experience index aligned to the three-tiered licensure system for teachers;
- (2) size factors associated with small schools and small school districts; and
- (3) any other factor with the potential to affect the equity and efficacy of the funding formula as a whole.

History: Laws 2005, ch. 49, §1; 2006, ch. 56, § 1.

**The 2006 amendment**, effective May 17, 2006, changed the expiration date in Subsection A from December 15, 2006 to December 15, 2007, and added Paragraph (5) of Subsection B to add to the task force one representative of a statewide teacher organization appointed by the New Mexico legislative council.

#### **22-8-47. New Mexico government education fund.**

A. The "New Mexico government education fund" is created in the state treasury.

B. The New Mexico government education fund shall consist of appropriations by the legislature, gifts, grants and donations.

C. The New Mexico government education fund shall be administered by the department. Money in the fund is appropriated to the department to contract for annual, week-long, high school civics courses focusing on New Mexico state government for boys and girls to be held at varying post-secondary educational institutions in New Mexico.

D. Disbursements from the New Mexico government education fund shall be made by warrant of the department of finance and administration pursuant to vouchers signed by the secretary.

E. Any unexpended or unencumbered balance remaining in the fund at the end of a fiscal year shall not revert but shall remain to the credit of the New Mexico government education fund.

History: Laws 2005, ch. 207, § 1.

**Effective dates.** — Laws 2005, ch. 207 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 17, 2005, 90 days after adjournment of the legislature.

#### **22-8-48. New school development fund; distribution.**

A. The "new school development fund" is created in the state treasury. The fund shall consist of appropriations, gifts, grants, donations and bequests made to the fund. Income from

the fund shall be credited to the fund, and money in the fund shall not revert or be transferred to any other fund at the end of a fiscal year. Money in the fund is appropriated to the department for the purposes of making distributions pursuant to Subsection B of this section. Expenditures from the fund shall be made on warrant of the secretary of finance and administration pursuant to vouchers signed by the secretary.

B. Upon application to the department by a school district and subject to the availability of funds, the department may approve a distribution to the school district from the new school development fund to supplement district funds needed to pay for supplies, equipment and operating costs unique to the first year of operation of a new school, provided that the department shall not approve a distribution unless it determines that there are no other reasonably available federal, private or other public sources for the needed funding.

History: 1978 Comp. § 22-24-11, as enacted by Laws 2006, ch. 95, § 3; recompiled as § 22-8-48 by Laws 2007, ch. 366, § 25.

**Recompilations.** — Laws 2007, ch. 366, § 25 recompiled former 22-24-11 NMSA 1978 as 22-8-48 NMSA 1978, effective July 1, 2007.

---

June 18th meeting  
HANDOUT

## GALLUP-McKINLEY COUNTY PUBLIC SCHOOLS

**FRANK CHIAPETTI**  
SUPERINTENDENT

**KIM BROWN**  
Asst. Supt of Business Services

**PHYLLIS CASUSE**  
Supt of Personnel Services



**LEONARD HASKIE**  
Asst. Supt of Support Services

"GROWING STUDENTS TO BE PRODUCTIVE CITIZENS IN A MULTI-CULTURAL SOCIETY"

June 13, 2014

Sen. John Sapien  
District #9  
1600 w. Ella  
Corrales, NM 87048

Rep. Mimi Stewart  
District #21  
313 Moon St. NE  
Albuquerque, NM 87123

Honorable Sen. Sapien and Honorable Rep. Stewart,

I am excited to see that you have formed a subcommittee regarding Charter Schools in New Mexico. With Gallup McKinley County Schools serving both Urban and Rural areas, charter schools promote some unique situations. Unfortunately I will be in a training in Virginia during your first meeting but there several of these situations I would like to bring to your attention.

The first deals with transportation. While GMCS is bound by state law on transporting students only within attendance boundaries of each school for reimbursement from the PED, charter schools do not fall under this rule. Currently Uplift Charter School buses students throughout the town of Gallup from areas that are covered by ten elementary school boundaries. Parents are now turning to the charter schools because their students will now be eligible for busing services when they live in a location in Gallup where they do not currently qualify for busing.

With the proposal for a new charter school in Navajo, N.M., this will expand the issue. In Navajo; Bureau of Indian Education, Window Rock Schools, and private schools cross state and county lines and bridges (illegal to cross due to weight) where GMCS is restricted. This is one of the underlying reasons for the school population in Navajo to decrease almost to the point of closing schools. If the new charter comes into existence this will add to the competition of schools and will force consolidation if not closure of schools.

The next situation deals with the disparity of unit value of school funding. Charter schools being given a higher unit value than public education schools are. With this these schools can offer more competitive salaries for their staff and materials for their students. This puts the public schools at a disadvantage to the charters, especially in the rural areas where we have a shortage of teachers and already compete with BIA, BIE, and private schools for students.

The last deals with capital outlay appropriations. After five years, charter schools qualify for capital outlay construction money. While I will not argue they should qualify for capital outlay, the automatic "no match" is what is upsetting to our district and community. Charter schools in areas of

the state that have a high level of bonding capacity and property values qualify for no match where public schools in impoverished low taxable areas with limited taxable land still struggle with the balancing act of using bond revenue for new capital outlay vs. critical repair needs.

I do believe many charters fulfill a need in education in New Mexico. The Middle College High School in Gallup is an example of this filling a need that GMCS has not covered for the community. While I express this need, the environment far above public schools in funding that charter schools are allowed to exist in are creating hardships for the public schools. This all boils down to funding; transportation, capital outlay, and the unit value. Giving the charter schools the added money in each of these areas not only puts them at a better competitive advantage but also "shrinks" the pool of money available to all public schools creating a wider disparity in funding public vs. charter schools.

Thank you for your continued support of public education in New Mexico. I hope to be present at future meeting of your committee to listen to concerns and solutions to bridging these gaps.

Respectfully,

Frank Chiapetti

Cc: GMCS School Board  
Matejka Santillanes

JUNE 18, 2014  
HANDOUT



## Attorney General of New Mexico

**GARY K. KING**  
Attorney General

**ALBERT J. LAMA**  
Chief Deputy Attorney General

April 1, 2014

OPINION  
OF  
**GARY K. KING**  
Attorney General

Opinion No. 14-03

BY: Joseph M. Dworak  
Assistant Attorney General

TO: The Honorable Linda M. Lopez  
New Mexico State Senator  
9132 Suncrest Rd. SW  
Albuquerque, NM 87121

### QUESTIONS:

- 1) Does the Educational Products and Services Agreement (the "Agreement") between the New Mexico Virtual Academy (the "School" or "NMVA") and K12 Virtual Schools LLC ("K12") violate the Charter Schools Act (the "Act"), NMSA 1978, Ch. 22, Art. 8B (1999, as amended through 2011), which prohibits the management of a charter school by a for-profit entity?
- 2) Is the Agreement between NMVA and K12 subject to the requirements of the state's Procurement Code, NMSA 1978, Sections 13-1-28 to -199 (1984, as amended through 2013)? If so, did NMVA violate the law's bidding requirements or term restrictions when it awarded a sole-source contract to K12?
- 3) Did allocations from \$2 million of proceeds appropriated for books and instructional materials to public schools under the 2010 Capital Projects General Obligation Bond violate state law or the purpose of the bond when funds were not proportionately distributed among all public schools in the state?

### CONCLUSIONS:

- 1) Yes. The administrative and managerial involvement by K12, a for-profit entity, constitutes "management" under Section 22-8B-4(R) of the Act. The Act's prohibition against for-profit management in charter schools was enacted with a purpose to prevent the kind of association

created between NMVA and K12--an affiliation with a for-profit organization that places a school in a position of dependency regarding issues of regular operation and control.

- 2) NMVA, as a public entity, is subject to the state's Procurement Code. On its face, the Agreement does not necessarily violate the Procurement Code's competitive bidding requirements, provided the School complied with the Code's requirements for sole source contracts. The term of the Agreement complies with the Code's requirements.
- 3) No. The Secretary of Public Education has explicit power under the New Mexico Constitution to administer and distribute funding to New Mexico schools. Neither state law nor the 2010 General Obligation Bond provided direction or limitation as to the specific distribution of funds authorized to purchase school books and instructional materials statewide. The Secretary had the authority to distribute the funds as she deemed appropriate, so long as the bond proceeds were used to purchase books and instructional materials for public schools throughout the state.

#### ANALYSIS:

##### 1. Do K12's Services Constitute "Management" Under the Charter Schools Act?

The New Mexico Virtual Academy is a virtual charter school chartered by the Farmington Municipal School District. As with all charter schools, NMVA is a public school and a public entity. As a virtual charter school, NMVA functions as an educational organization that offers primary school courses through internet and computer-based methods, often serving students at their homes or outside of a traditional classroom setting. In the fall of 2012, NMVA entered into a contract with K12 Virtual Schools LLC, a for-profit company, for services and program support related to its virtual education curriculum.

Our analysis focuses on the issue of whether K12 services to NMVA constitute "management of the charter school" under the Charter Schools Act. The Act expressly prohibits for-profit entities from managing charter schools:

A charter school is a public school that may contract with a school district or other party for provision of financial management, food services, transportation, facilities, education-related services or other services. The governing body shall not contract with a for-profit entity for the management of the charter school.

NMSA 1978, Section 22-8B-4(R) (emphasis added). Since the Act does not define "management," we must apply the rules of statutory construction to determine whether K12's services constitute "management of the charter school," as contemplated by the Act.

Generally, the "plain language of a statute [is] the primary indicator of legislative intent." State v. Willie, 2009-NMSC-037, ¶ 9 (citations omitted). However, if the plain meaning of a statute is ambiguous or doubtful courts will examine the statute as a whole and "construe the law according to its obvious spirit or reason." Id. The New Mexico Supreme Court recently cautioned that "ambiguity may be lurking in even seemingly plain words if they conflict with the

overall legislative intent.” Barker v. Hedstrom, 2013-NMSC-043, ¶ 22 (citations omitted). This tenet of analyzing legislative intent emphasizes that “[l]egislative enactments are to be interpreted to accord with common sense and reason.” Padilla v. Montano, 1993-NMCA-127, ¶ 23 (citations omitted).

The meaning of the term “management” in conjunction with the language of the statute is not entirely clear. A review of both the Act and the variety of products and services described in the Agreement shed light on the complexity of operating a virtual school, but what responsibilities or services amount to “management” under Section 22-8B-4(R) is not spelled out.

Because we are not provided with a definition of “management” in the statute, we look to the plain and usual meaning of the term. The dictionary definition of “management” is: “the act, art or manner of managing, or handling, controlling, directing, etc.” Webster’s New World College Dictionary 871-872 (4<sup>th</sup> ed. 2002). Looking beyond the general meaning of “management” we explore the root of the word, “manage,” and its definition, which includes: “to control the movement or behavior of; handle[,] to have charge of; direct; administer” and “to conduct or direct affairs; carry on business.” Id. at 871. This description offers greater context into what constitutes management, including one’s level of “control,” the definition of which is: “[t]o direct the management and policies of [an] . . . entity, whether . . . by contract, or otherwise; the power or authority to manage, direct, or oversee.” Black’s Law Dictionary 146 (3rd pocket ed. 2006). In a different context, K12’s Agreement defines “control” as: “the possession, directly, or indirectly, of the power to direct or cause the direction of the management policies of an entity, whether through the ownership of securities, by contract or otherwise.” Agreement, Definitions 1.1, at 1 (under term “Affiliates”). Based on these definitions, the plain meaning of the term “management” suggests that the legislature intended to prohibit for-profit entities from operating schools directly or indirectly through a management contract.

Restrictions placed on for-profit entities by the Act elucidate legislative intent, explicitly limiting potential relationships between for-profit entities and charter schools. There is only a pair of references to for-profit entities outside of Section 22-8B-4(R). Under Section 22-8B-6(F) of the Act, “for-profit business entities are not eligible to apply for or receive a charter.” This prohibition on for-profit charter schools further illustrates the legislature’s intent to limit the role that for-profit entities have in New Mexico’s public school system.

Whether services provided by K12 constitute “management,” as that term is commonly understood, is a fact-specific issue that may be determined only once the relationship with NMVA is examined and services provided under the Agreement are considered in their entirety.

K12’s contracted authority to integrate into nearly every aspect of the administration of the school is obvious and raises questions over the extent of its future duties within the School.<sup>1</sup> The

---

<sup>1</sup> Products and services provided by K12 and the company’s involvement within the School are extensive. Many involve significant responsibilities that are fundamental to the operation of the School. Administrative services provided by K12 under the Agreement include fifteen separate capacities: 1) educational program consulting; 2) personnel assistance, such as interviewing, recommendations on hiring and firing, negotiations, background checks, employee benefits,

Agreement provides that K12 may assist in obtaining insurance, identify the location of school facilities, prepare a proposed budget and conduct future financial planning for the School. K12 is also intimately involved in the maintenance of the School's student records and business administration, providing counsel and advice on everything from student discipline and privacy laws to identifying funding opportunities and providing administrative staff to the school. Although the Agreement leaves certain responsibilities to the School (i.e. payroll services and benefit plans), and purports to give NMVA a degree of ultimate oversight, the Agreement allows K12 to have significant influence on general personnel management. For example, although the Agreement states that NMVA shall employ and "be ultimately responsible" for staff NMVA assigns to the online educational program, K12 is responsible for advertising positions, identifying and interviewing candidates and making recommendations to NMVA's governing body. Agreement, § 7.4. NMVA employs all teachers "[u]nless otherwise agreed by K12 and the School . . . ." Id. § 7.9.

K12's administrative and managerial responsibilities under the Agreement are significant and the Agreement's allowance for K12 to assume additional responsibilities creates uncertainty and leaves questions about the ultimate extent of involvement that the company may exert within the School. The Agreement allows for seemingly limitless additions to the services and responsibilities provided by K12 if agreed to by both parties.<sup>2</sup> Despite any ambiguity of the term "management," the Agreement's explicit use of the word "manage" in reference to K12's services is striking: "For each school year . . . K12 will provide a license for and access to[,] among other services, "any third party curriculum K12 generally offers its managed virtual schools . . . ." Agreement, Exhibit A, Section I.1 (emphasis added). This suggests an acknowledgement by the parties to the Agreement that K12 serves in a management capacity for its contracted virtual schools.

---

human resource polices, and strategic staffing plans; 3) assistance in obtaining insurance for the School; 4) facility management, including assisting with site location and lease negotiations; 5) business administration of a wide array of program aspects; 6) budgeting, financial reporting, and preparing a proposed annual budget; 7) financial planning; 8) maintenance of student records and retention of such records on behalf of school; 9) recommend school policies and procedures for student discipline; 10) creation of the annual report to the chartering authority; 11) develop teacher training and faculty handbook; 12) assist in charter policies and charter renewal process; 13) provide policies and procedures for instructional property; 14) solicit and receive grants and donations from public funds subject to approval by NMVA; 15) and any other services agreed to in writing by both parties. See Agreement, Exhibit A, at 23-25. Educational products, pupil recruiting, and product related services provided by K12 under the Agreement include, but are not limited to: student recruitment; advertising; development of the school identity with letterhead, business cards, and the creation and maintenance of the School website; implementation of the School's admission policy; family services and orientation sessions; program feedback; social networking; and counseling tools for college prep and career planning. See Agreement, at 22-23.

<sup>2</sup> See id.

Control explicitly granted to K12 over NMVA's administration and educational program, and the possibility of K12's assumption of greater responsibility through NMVA's consent pursuant to the Agreement, conflict with legislative intent under the Charter Schools Act to limit for-profit involvement in the daily functioning of charter schools. Accordingly, we conclude that the services provided by K12 and the relationship created under the Agreement constitute "management of the charter school" under Section 22-8B-4, a violation of the Charter Schools Act.

## 2. Compliance with the Procurement Code

New Mexico's Procurement Code creates a framework of regulations for the procurement and implementation of contracts executed by public entities. The Procurement Code "shall apply to every expenditure by state agencies and local public bodies for the procurement of items of tangible personal property, services and construction." Section 13-1-30. NMVA, as a public entity, is required to comply with the provisions of the Procurement Code.

The legislature has provided certain exclusions to the applicability of the Procurement Code, including the use of the state purchasing agent.<sup>3</sup> "Excluded from the requirement of procurement through the state purchasing agent" are "procurement[s] by charter schools . . . ." Section 13-1-99(L). Although certain public entities do not have to consult with the state purchasing agent on procurement matters, the exception does not exclude entities from the other requirements of the Procurement Code. Id.

### a. Competitive Bidding Requirements

The Agreement is a sole source contract. Generally, a public entity must entertain competitive bids or proposals unless it is demonstrated that a sole-source contract by a single vendor is warranted. See NMSA 1978, §§ 13-1-102; 13-1-111; 13-1-126. Section 13-1-126(A) provides:

A contract may be awarded without competitive sealed bids or competitive sealed proposals regardless of the estimated cost when the state purchasing agent or a central purchasing office determines, in writing, that:

- (1) there is only one source for the required service, construction or item of tangible personal property;
- (2) the service, construction or item of tangible personal property is unique and this uniqueness is substantially related to the intended purpose of the contract; and
- (3) other similar services, construction or items of tangible personal property cannot meet the intended purpose of the contract.

---

<sup>3</sup> The Procurement Code defines "state purchasing agent" as "the director of the purchasing division of the general services department." NMSA 1978, § 13-1-92.

Provided NMVA met the Code's requirements for sole source contracts, the Agreement does not violate the Code simply because it was awarded without competitive sealed bids or proposals.

b. Term Requirements

The Procurement Code provides that "[a] contract for professional services may not exceed four years" except under certain conditions. Section 13-1-150(B). The executed Agreement's term commences on July 1, 2012 and terminates on June 30, 2016. See Agreement, Section 5.1. There are no other stipulations in the Agreement as to additional terms or renewals. The four-year term of the Agreement is within the accepted parameters of the Procurement Code and does not violate state law.

3. Expenditures of 2010 Bond Proceeds

The 2010 Capital Projects General Obligation Bond Act, Chapter 3, Section 10 of New Mexico Laws of 2010 (2nd Spec. Sess.) ("2010 GO Bond Act"), was approved in a special session of the legislature and voted on by New Mexico voters during the 2010 general election. Among the purposes of the bond was "public school facility improvements acquisitions, bus acquisitions and books and instructional materials acquisitions, to the public education department" including the amount of "two million dollars (\$2,000,000) to purchase school books and instructional materials statewide . . . ." Id. § 10(C)(2). The applicable ballot question contained the following language:

The 2010 Capital Projects General Obligation Bond Act authorizes the issuance and sale of public school facility improvement and public school books and instructional materials acquisition bonds. Shall the state be authorized to issue general obligation bonds in an amount not to exceed five million one hundred thousand dollars (\$5,100,000) to make capital expenditures for pre-kindergarten classrooms and facilities at public schools and for public school books and instructional materials and provide for a general property tax imposition and levy for the payment of principal of, interest on and expenses incurred in connection with the issuance of the bonds and the collection of the tax as permitted by law?

Id. § 11(B)(3). The bond issue for the purpose stated in the question was approved by over sixty-percent of the state's voters who voted on the question.

Article XII, Section 6 of the New Mexico Constitution grants the Secretary of Public Education authority as provided by law, including the discretion to administer and distribute state funding.

Section 6(D) states:

The secretary of public education shall have administrative and regulatory powers and duties, including all functions relating to the distribution of school funds and financial accounting for the public schools to be performed as provided by law.

This authority has been construed somewhat liberally to allow the Secretary the capability to execute his or her responsibilities. See generally Skowronski v. N.M. Public Educ. Dep't, 2013-NMCA-034 (acknowledging that the New Mexico Constitution and legislature, through the Public Education Department Act, grant broad authority and administrative power to the Secretary of Public Education), cert. granted, 300 P.3d 1181 (N.M. 2013). Under Article XII, Section 6, the Secretary has the authority to allocate funding so long as it does not conflict with state law, or any directives or restrictions placed on the appropriation.

The appropriation to the Public Education Department under the 2010 GO Bond Act does not include specific restrictions on the bond proceeds other than a directive to “purchase school books and instructional materials statewide.” There is no requirement that the \$2 million in bond proceeds be distributed proportionately or otherwise.<sup>4</sup> We follow the intent of the bond’s language and “must assume the legislature chose its words advisedly to express its meaning unless the contrary intent clearly appears.” Diamond v. Diamond, 2012-NMSC-022, ¶ 29 (citations omitted).

The term “statewide” as used in the 2010 GO Bond Act does not appear to indicate anything other than that funding was not designated for a specific county, school district, individual school or other part of the state. Without additional evidence of legislative intent, we cannot interpret “statewide” as used in the 2010 GO Bond Act to mean any particular method of distributing the funding so long as the process is otherwise lawful, reasonable and not arbitrary.

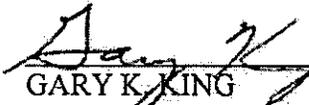
According to a memorandum received by the Legislative Education Study Committee, the proceeds from the bonds were distributed based on student enrollment to eighty-eight “award” schools across the state, with all but three recipients designated as either “A” or “Top Growth” schools. See Memorandum to Legislative Education Study Committee from Sarah M. Amador-Guzman re: A-F School Grading System Update (Nov. 13, 2012). Consistently with the discussion above, we do not believe this method of distributing the bond proceeds violates the 2010 GO Bond Act or other applicable state law.

Based on the text of the legislation authorizing the bond and the constitutional and statutory powers granted to the Secretary of Public Education, we conclude that, absent additional facts

---

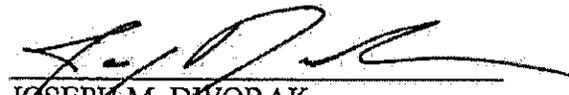
<sup>4</sup> We understand that because of the source of the funding, money distributed under the 2010 GO Bond Act was not covered by the Instructional Material Law, NMSA 1978, Sections 22-15-1 to -14 (1967, as amended through 2011), which governs the distribution of instructional materials to students and the annual allocation of funds to school districts for instructional materials. See Memorandum to Superintendents, Business Managers and Charter School Administrators from Antonio Ortiz, Director, Student Services and Transportation Division of the Public Education Department (Nov. 1, 2012).

suggesting otherwise, the Secretary did not abuse her discretion when allocating \$2 million of the 2010 bond proceeds to New Mexico public schools for the purchase of books and instructional materials.



---

GARY K. KING  
Attorney General



---

JOSEPH M. DWORAK  
Assistant Attorney General